International Labour Organization

Report III /Addendum (Part A)

# Application of International Labour Standards 2021

## Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations

International Labour Conference
109th Session, 2021

**Report III/Addendum(Part A)**

# ▶ Addendum to the 2020 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**

**General Report and observations concerning particular countries**

**International Labour Office, Geneva**

ISBN 978-92-2-034157-5 (print)
ISBN 978-92-2-034158-2 (Web pdf)
ISSN 0074-6681

First edition 2021



Formatted by TTE: Confrep-ILC109(2021)-ReportIII(A)Addendum-2021-[NORME-210127-002]-En.docx
Printed by the International Labour Office, Geneva, Switzerland

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

(a) The **Reader's note** provides indications on the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference (their mandate, functioning and the institutional context in which they operate) **(Part A, pages 1–4)**.

(b) **Part I:** the **General Report** describes the manner in which the Committee of Experts undertakes its work and the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards, and it draws the attention to issues of general interest arising out of the Committee's work **(Part A, pages 5–49)**.

(c) **Part II: Observations concerning particular countries** cover the sending of reports, the application of ratified Conventions (see section I), and the obligation to submit instruments to the competent authorities (see section II) **(Part A, pages 51–741)**.

(d) **Part III: Addendum to the General Survey**, in which the Committee of Experts examines the state of the legislation and practice regarding a specific area covered by a given number of Conventions and Recommendations. This examination covers all member States regardless of whether or not they have ratified the given Conventions. The General Survey is published as a separate volume (Report III(Part B)) and this year it concerns the Employment Policy Convention, 1964 (No. 122), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Home Work Convention, 1996 (No. 177), the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), the Home Work Recommendation, 1996 (No. 184), the Employment Relationship Recommendation, 2006 (No. 198), and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) **(Part B)**.

The report of the Committee of Experts is also available at: www.ilo.org/normes.

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

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

| | | |
|---|---|---|
| **1** | **Freedom of association, collective bargaining, and industrial relations** | |
| | C011 | Right of Association (Agriculture) Convention, 1921 (No. 11) |
| | C084 | Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84) |
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| | C098 | **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** |
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| | C105 | **Abolition of Forced Labour Convention, 1957 (No. 105)** |
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| ● | C033 | Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33) |
| ★ | C059 | Minimum Age (Industry) Convention (Revised), 1937 (No. 59) |
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| ★ | 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)** |
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| ♦ | C190 | Violence and Harassment Convention, 2019 (No. 190) |
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| ● | C063 | Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63) |
| ★ | C081 | *Labour Inspection Convention, 1947 (No. 81)* |
| | C085 | Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85) |
| | C129 | *Labour Inspection (Agriculture) Convention, 1969 (No. 129)* |
| | C150 | Labour Administration Convention, 1978 (No. 150) |
| | C160 | Labour Statistics Convention, 1985 (No. 160) |
| | P081 | Protocol of 1995 to the Labour Inspection Convention, 1947 |
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| | C088 | Employment Service Convention, 1948 (No. 88) |
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| | C159 | Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) |
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| **10** | **Wages** | |
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| ★ | 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) |

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| □ | C004 | Night Work (Women) Convention, 1919 (No. 4) |
| | C014 | Weekly Rest (Industry) Convention, 1921 (No. 14) |
| | C020 | Night Work (Bakeries) Convention, 1925 (No. 20) |
| | C030 | Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) |
| ■ | C031 | Hours of Work (Coal Mines) Convention, 1931 (No. 31) |
| □ | C041 | Night Work (Women) Convention (Revised), 1934 (No. 41) |
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| ■ | C046 | Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46) |
| | C047 | Forty-Hour Week Convention, 1935 (No. 47) |
| | C049 | Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49) |
| ■ | C051 | Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51) |
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| □ | C067 | Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67) |
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| ★ | 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) |
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| | C175 | Part-Time Work Convention, 1994 (No. 175) |
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| | 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) |
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| ★ | 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) |
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| ● | C036 | Old-Age Insurance (Agriculture) Convention, 1933 (No. 36) |
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| ● | 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) |

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

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| | C094 | Labour Clauses (Public Contracts) Convention, 1949 (No. 94) |
| | C117 | Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) |

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| □ | C021 | Inspection of Emigrants Convention, 1926 (No. 21) |
| ■ | C066 | Migration for Employment Convention, 1939 (No. 66) |
| | C097 | Migration for Employment Convention (Revised), 1949 (No. 97) |
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| **17** | **Seafarers** | |
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| ★ | C009 | Placing of Seamen Convention, 1920 (No. 9) |
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| ★ | C023 | Repatriation of Seamen Convention, 1926 (No. 23) |
| ★● | C053 | Officers' Competency Certificates Convention, 1936 (No. 53) |
| ★◆● | C054 | Holidays with Pay (Sea) Convention, 1936 (No. 54) |
| ★● | C055 | Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) |
| ★● | C056 | Sickness Insurance (Sea) Convention, 1936 (No. 56) |
| ★◆● | C057 | Hours of Work and Manning (Sea) Convention, 1936 (No. 57) |
| ★● | C058 | Minimum Age (Sea) Convention (Revised), 1936 (No. 58) |
| ★● | C068 | Food and Catering (Ships' Crews) Convention, 1946 (No. 68) |
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| ★◆● | C070 | Social Security (Seafarers) Convention, 1946 (No. 70) |
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| ★◆● | C072 | Paid Vacations (Seafarers) Convention, 1946 (No. 72) |
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| ★● | C074 | Certification of Able Seamen Convention, 1946 (No. 74) |
| ★◆● | C075 | Accommodation of Crews Convention, 1946 (No. 75) |
| ★◆● | C076 | Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76) |
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| ★◆● | C093 | Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93) |
| ● | C108 | Seafarers' Identity Documents Convention, 1958 (No. 108) |
| ★◆● | C109 | Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) |
| ★● | C133 | Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) |
| ★● | C134 | Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) |
| ★● | C145 | Continuity of Employment (Seafarers) Convention, 1976 (No. 145) |
| ★● | C146 | Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) |
| ★● | C147 | Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) |
| ★● | C163 | Seafarers' Welfare Convention, 1987 (No. 163) |
| ★● | C164 | Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164) |
| ★● | C165 | Social Security (Seafarers) Convention (Revised), 1987 (No. 165) |
| ★● | C166 | Repatriation of Seafarers Convention (Revised), 1987 (No. 166) |
| ★● | C178 | Labour Inspection (Seafarers) Convention, 1996 (No. 178) |
| ★● | C179 | Recruitment and Placement of Seafarers Convention, 1996 (No. 179) |
| ★● | C180 | Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) |
| | C185 | Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185) |
| | MLC, 2006 | Maritime Labour Convention, 2006 (MLC, 2006) |
| ★● | P147 | Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 |

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

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|---|---|---|
| **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) |
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| □ | 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) |
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| | C172 | Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172) |
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| | C189 | Domestic Workers Convention, 2011 (No. 189) |
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# Index of comments by Convention [1]



[1] In light of the decision taken by the Governing Body at its 338th Session (June 2020) and on the basis of the supplementary information or a report provided by the Government, as well as the observations received from social partners, the Committee updated in 2020 the observation adopted in 2019. For ease of reference, these updated observations appear in this index in bold and italics.

# Index of comments by country [1]



[1] In light of the decision taken by the Governing Body at its 338th Session (June 2020) and on the basis of the supplementary information or a report provided by the Government, as well as the observations received from social partners, the Committee updated in 2020 the observation adopted in 2019. For ease of reference, these updated observations appear in this index in bold and italics.

# Reader's note

## Overview of the ILO supervisory mechanisms

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

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

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

## Role of employers' and workers' organizations

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

In practice, representative employers' and workers' organizations may submit to their governments' observations on the reports concerning the application of international labour standards. They may, for instance, draw attention to a discrepancy in law or practice regarding the application of a ratified Convention. Furthermore, any employers' or workers' organization may submit observations on the application of international labour standards directly to the Office. The Office will then forward these to

[1] For detailed information on all the supervisory procedures, see ILO *Handbook of procedures relating to international labour Conventions and Recommendations*, International Labour Standards Department, Geneva, 2019.

[2] Reports are requested every three years for the fundamental Conventions and governance Conventions, and from now on, every six years for other Conventions. In fact, at its 334th Session the Governing Body decided to expand the reporting cycle for the latter category of Conventions from five to six years (GB.334/INS/5). Reports are due for groups of Conventions according to subject matter.

the government concerned, which will have an opportunity to respond before the observations are examined by the Committee of Experts except in exceptional circumstances. [3]

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

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

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

### Composition

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

### Work of the Committee

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

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

The task of the Committee of Experts is to indicate the extent to which each Member State's legislation and practice are in conformity with ratified Conventions and the extent to which Member States have fulfilled their obligations under the ILO Constitution in relation to standards. In carrying out this task, the Committee adheres to its principles of independence, objectivity and impartiality. [7] The comments of the Committee of Experts on the fulfilment by Member States of their standards-related obligations take the form of either observations or direct requests. Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They are reproduced in the annual report of the

[3] General Report, paras 144 et seq.

[4] *Record of Proceedings* of the Eighth Session of the International Labour Conference, 1926, Vol. 1, Appendix VII.

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

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

[7] General Report, para. 43.

Committee of Experts, which is then submitted to the Conference Committee on the Application of Standards in June every year. Direct requests are not published in the report of the Committee of Experts, but are communicated directly to the government concerned and are available online. [8] In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given number of Conventions and Recommendations chosen by the Governing Body. [9] The General Survey is based on the reports submitted in accordance with articles 19 and 22 of the Constitution, and it covers all Member States regardless of whether or not they have ratified the concerned Conventions. This year's Addendum to the 2020 General Survey on promoting employment and decent work in a changing landscape presents complementary information to last year's Survey in light of the COVID-19 pandemic.

## Report of the Committee of Experts

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

The first volume (Report III (Part A)) [10] is divided into two parts:

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

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

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

## Composition

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

## Work of the Committee

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

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

[8] General Report, para. 117. Observations and direct requests are accessible through the NORMLEX database available at: www.ilo.org/normes.

[9] By virtue of the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008, a system of annual recurrent discussions in the framework of the Conference has been established to enable the Organization to gain a better understanding of the situation and varying needs of its members in relation to the four strategic objectives of the ILO, namely: employment; social protection; social dialogue and tripartism; and fundamental principles and rights at work. The Governing Body considered that the recurrent reports prepared by the Office for the purposes of the Conference discussion should benefit from the information on the law and practice of Member States contained in General Surveys, as well as from the outcome of the discussions of General Surveys by the Conference Committee. In principle, the subjects of General Surveys have therefore been aligned with the four strategic objectives of the ILO. The importance of the coordination between the General Surveys and recurrent discussions was reaffirmed in the context of the adoption of a five-year cycle of recurrent discussions by the Governing Body in November 2016. In the context of discussing measures to strengthen the supervisory system in November 2018, the Governing Body invited the Committee of Experts to make proposals on its possible contribution to optimizing the use made of article 19, paragraphs 5(e) and 6(d), of the Constitution, in particular by considering measures to improve the presentation of General Surveys, so as to ensure a user-friendly approach and format that maximizes their value for constituents (document GB.334/INS/5).

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

– measures taken in accordance with article 35 of the Constitution (non-metropolitan territories).

The Committee is required to present its report to the plenary sitting of the Conference.

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

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

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

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

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

[11] The report is published in the *Record of Proceedings* of the Conference. Since 2007, it has also been issued in a separate publication. See, for the last report, *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, International Labour Conference, 108th Session, Geneva, 2019.

# Part I. General Report

# I. Introduction

**1.** The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by Member States of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 91st Session from 25 November to 12 December 2020. The Committee has the honour to present its report to the Governing Body.

**2.** The Committee conducted its 91st Session virtually due to the mobility restrictions imposed in the context of the COVID-19 pandemic, making use of a web-based collaborative platform and an online conferencing facility. The Committee took note of the deferral of the 109th Session of the International Labour Conference to June 2021 and the consequent adaptation of the reporting cycle decided by the Governing Body at its 338th Session (March 2020). [1] As a result of this decision, the Committee had before it at its current session:

- Supplementary information on the article 19 reports submitted in 2019 on employment related instruments, highlighting relevant developments that might have occurred in the meantime; and
- Supplementary information on the article 22 and 35 reports submitted last year, highlighting relevant developments, if any, on the application of the provisions of Conventions under review that might have occurred in the meantime; certain reports requested and received in 2019 that could not be considered at its previous session; reports requested on the basis of a footnote adopted by the Committee requesting a report for this year; reports requested on the follow-up of failures to submit reports; and
- Information on submissions to the competent authorities under article 19 of the ILO Constitution.

**3.** The Committee accordingly submits:

- the Addendum to the General Survey entitled "Promoting employment and decent work in a changing landscape" which was released in 2020; and
- the present General Report and the Committee's observations concerning particular countries, most of which contain an update to the observations released in 2020.

## Composition of the Committee

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

[1] Governing Body, 338th Session (March 2020). Decision concerning Member States reporting obligations and the work of the CEACR and the Committee on the Application of Standards as a result of the deferral of the 109th Session of the International Labour Conference to 2021, Institutional Section Record of decisions.

**5.** During its session, the Committee functioned with a full composition of 20 members and welcomed the appointment of Mr Sandile Ngcobo by the Governing Body at its 338th Session (March 2020).

**6.** The Committee also noted that this was the final session for two of its most eminent members, Mr Abdul G. Koroma, former Chairperson of the Committee, and Mr Lelio Bentes Corrêa, former Chairperson of the Subcommittee on Working Methods, both of whom had joined the Committee in 2006 and reached the maximum term of 15 years. The Committee expressed its profound gratitude to the two Experts for their invaluable contribution and dedication to its work.

**7.** The Committee expressed its deep appreciation for the outstanding manner in which Judge Koroma carried out his duties throughout his 15 years of service on the Committee and, in particular, commended him warmly for the highly professional way in which he carried out the important and exacting task of leading the Committee during the six years (84th to 89th Sessions) he served as Chairperson of the Committee. Over the years, Judge Koroma worked in particular on Conventions related to employment as well as migrant workers and his contribution in these areas will remain long lasting.

**8.** The Committee also extended its special appreciation for the remarkable contribution Judge Bentes Corrêa brought to the Committee during his years of service and, in particular, commended him warmly for the visionary and creative way in which he carried out his duty as Chairperson of the Subcommittee on Working Methods over a number of years. During his time with the Committee, Judge Bentes Corrêa worked in particular on Conventions related to the elimination of the worst forms of child labour as well as on indigenous people's rights and brought his invaluable expertise on these thematics.

**9.** This year, Ms Graciela Dixon Caton continued her mandate as Chairperson and Ms Rosemary Owens was elected as Reporter.

## Working methods

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

**11.** In order to guide the Committee's reflection on continuous improvement of its working methods, a Subcommittee on Working Methods was set up in 2001 with the mandate to examine the working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee. This year, under the Chairpersonship of Mr Bernd Waas, the Subcommittee on Working Methods met for the 20th time. The Subcommittee focused its discussions on the follow up to the Governing Body's discussions concerning the work plan for the strengthening of the supervisory mechanism. In particular, the Subcommittee discussed progress made in the implementation of Information Technology (IT) enhancements enabling the Committee to work fully electronically for the preparation, review, adoption and publication of its report following a decision taken by the Governing Body at its 331st Session (October–November 2017). The Subcommittee noted that the introduction of these IT enhancements in 2020 enabled the Committee to hold this year's session remotely and overcome the limitations imposed by the COVID-19 pandemic. The new document and information management system has facilitated the Committee's work, by streamlining the previously paper-based processes, improving document management and expanding the Experts' ability to work remotely and collaborate online. Further IT enhancements will be introduced in 2021 in close consultation with the Experts.

**12.** The Subcommittee also took note of certain delays in the implementation of two decisions taken at its previous session with regard to urgent appeals and reports treated without comment, due to the adaptations introduced to the reporting cycle following the deferral of the 109th Session of the International Labour Conference and certain IT limitations.

**13.** The Subcommittee recalled that in the context of discussing measures to strengthen the supervisory system in November 2018, the Governing Body had invited the Committee of Experts to make proposals on its possible contribution to optimizing the use made of article 19, paragraphs 5(e) and 6(d), of the Constitution, [2] in particular by considering measures to improve the presentation of General

[2] As indicated in footnote No. 9 of the reader's note, which is reproduced here for ease of reference, by virtue of the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008, a system of annual recurrent discussions in the framework of the Conference has been established to enable the Organization to gain a better understanding of the situation and varying needs of its members in relation to the four strategic objectives of the ILO, namely: employment; social protection; social dialogue and tripartism; and fundamental principles and rights at work. The Governing Body considered that the recurrent reports prepared by

Surveys, so as to ensure a user-friendly approach and format that maximizes their value for constituents. [3] Following up on this invitation, the Committee decided to introduce Executive Summaries providing a brief overview of the main elements examined in General Surveys so as to facilitate their discussion at the Conference. The Subcommittee looked forward to the feedback that the constituents might provide on the impact of this innovation, including the role of General Surveys in informing Recurrent Discussions at the International Labour Conference, so as to enable the Committee to continue its reflections on ways to optimize General Surveys.

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

**14.** A spirit of mutual respect, cooperation and responsibility has consistently prevailed over the years in the Committee's relations with the Committee on the Application of Standards of the International Labour Conference. In this context, the Chairperson of the Committee has been invited to participate in the general discussion of the Conference Committee at the 109th Session of the International Labour Conference which was initially scheduled in May–June 2020 and was deferred to June 2021 due to the COVID-19 pandemic.

**15.** The Chairperson of the Committee of Experts invited the Employer Vice-Chairperson (Ms Sonia Regenbogen) and the Worker Vice-Chairperson (Mr Marc Leemans) to participate in a special sitting of the Committee at its present session. They both accepted this invitation. An interactive and thorough exchange of views took place on matters of common interest. This year the discussion focused on two questions: the impact of COVID-19 on the world of work and the role of an authoritative supervisory mechanism in response to this challenge as this is emerging from the Centenary Declaration on the Future of Work.

**16.** In its introductory comments, **the Committee of Experts** shared its considerations on the devastating economic and human impact of the pandemic and emphasized the importance of building on the guidance provided by international labour standards and an authoritative supervisory mechanism in the context of building back better as provided for in the Centenary Declaration on the Future of Work. The Committee's considerations on this subject are reflected in a separate section of the General Report dedicated to COVID-19.

**17.** **The Employer Vice-Chairperson** observed that the world has experienced an historic public and economic upheaval due to the COVID-19 pandemic. Numerous governments have declared states of emergency to mitigate the spread of the virus and increased executive power by enacting emergency laws. Vigilance is necessary in the face of these expanding powers by certain governments. While they are necessary for public health, they risk having a serious impact on fundamental rights and freedoms.

**18.** COVID-19 caused many governments to encounter greater challenges in complying with ratified international labour standards in law and in practice. Factors such as lack of resources and funding issues, urgent health measures, or states of emergency might have translated into a temporary derogation of application of certain provisions. Although cases of non-compliance with ratified Conventions should be analysed and assessed on a case-by-case basis taking into account the national realities, COVID-19 should not be an excuse for violations of ratified Conventions, especially fundamental and governance Conventions. The assessment of compliance with these Conventions should be a priority under the current exceptional circumstances.

**19.** Employers' organizations brought to the attention of the Committee of Experts observations under article 23(2) of the ILO Constitution, on violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) by a number of governments. They were also concerned at the increase in child labour, forced labour and discrimination in the workplace as a consequence of the global pandemic. The application in law and in practice of ratified Occupational Safety and Health Conventions should also be a priority along with the Maritime Labour Convention, 2006 (MLC, 2006), as amended, given the significant challenges faced by the global shipping industry to effect crew change and repatriate seafarers as a result of the measures taken to contain the COVID-19 pandemic, and their subsequent

the Office for the purposes of the Conference discussion should benefit from the information on the law and practice of Member States contained in General Surveys, as well as from the outcome of the discussions of General Surveys by the Conference Committee. In principle, the subjects of General Surveys have therefore been aligned with the four strategic objectives of the ILO. The importance of the coordination between the General Surveys and recurrent discussions was reaffirmed in the context of the adoption of a five-year cycle of recurrent discussions by the Governing Body in November 2016.

[3] GB.334/INS/5.

adverse impact on seafarers' rights. A resolution by the ILO Governing Body on this subject was supported by her group.

**20.** The Employer Vice-Chairperson shared information on the drastic impact of the COVID-19 pandemic on economic activity, job creation and productivity as various necessary public health measures were needed to contain the spread of the virus. She also referred to the ways in which the global pandemic has accelerated the transformation of the world of work in particular through rapid digitalization. She expressed fears that unless more is done to invest in job creation and training opportunities, the world may be heading towards a jobless recovery and a larger gap in the digital divide.

**21.** The Employer Vice-Chairperson emphasized the importance of sustainable enterprises in creating employment, creating more opportunities for the vulnerable, and increasing prosperity and the quality of life for all people. She underlined that sustainable enterprises are part of the solution in tackling the impacts of the pandemic, addressing long term sustainability challenges and seeking positive recovery. She called for enhanced, strategic and determined collaboration between the public and the private sector which in her view is more important than ever to pave the path for an efficient, strong and resilient private sector led recovery and to build a better future. She also referred to countries which demonstrated that effective and inclusive social dialogue is the best approach to respond to the current situation and applauded these efforts.

**22.** The Employer Vice-Chairperson also emphasized that the challenge is how to mitigate the damage on businesses and livelihoods, rebuild the economy, and revive economic growth on a robust, resilient and sustainable path. She expressed the view that productive employment and decent work through sustainable enterprises is the way to build back a better world of work after the pandemic.

**23.** The Employer Vice-Chairperson stated that it is very important for the Committee of Experts to adopt a balanced, pragmatic and mindful approach in developing its report taking into account the needs of sustainable enterprises when assessing compliance with standards and in the update of the General Survey on employment instruments.

**24.** The Employer Vice-Chairperson emphasized the undisputed importance of an effective and authoritative supervision of standards in times of crisis, as this is emerging from the Centenary Declaration. There is also clear global tripartite consensus that the ILO Centenary Declaration should be the key framework for a sustainable and resilient recovery. The Declaration calls for international labour standards to respond to the "changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises". This requires supervisory bodies to be balanced and flexible to new innovative thinking, approaches, assessments and methodologies that are appropriate to meet the changing needs and realities at national level.

**25.** The Employer Vice Chairperson considered that in fully recognising the dramatic upheavals in the world of work, the Committee of Experts needs to listen actively to the tripartite constituents to understand their actual needs in the specific national contexts and to provide them with practical and effective policy guidance. The pandemic has created an opportunity for the ILO supervisory system to pause and ask itself whether the ILO regular supervision is effective, authoritative, relevant, impactful and is helping Member States ensure compliance with ratified Conventions in a sustainable manner in law and in practice. This is an opportunity for both the Committee of Experts and for the Committee on the Application of Standards, in the framework of the informal tripartite consultations on that Committee's working methods, to engage in a preliminary reflection. In this regard, she also called for Office assistance to build the capacities of employers' organizations and enable them to submit comprehensive observations to the Committee of Experts.

**26.** The Employer Vice-Chairperson emphasized that the success of standards supervision relies in large part on the open dialogue and strong cooperation of all the actors involved, namely the Conference Committee, the Committee of Experts, the Office and the tripartite constituents of the Member States. She referred to the need for continuous dialogue and cooperation across the board and noted in particular, that the ILO supervisory bodies must ensure that their non-binding assessments of compliance are aligned and are receptive to the views expressed by the tripartite constituents. The Employer Vice-Chairperson referred to the way in which the long-standing issue of "right to strike" has damaged dialogue and cooperation. Noting that no one benefits from this situation, she emphasized that the solution lies in the hands of the Conference Committee that managed to navigate turbulent times in the past, but also in the hands of the Committee of Experts and of course in the hands of the Office that provides the support. Past experience has demonstrated that alignment of views and recommendations from the Conference Committee and the Committee of Experts are likely to generate faster and better results and more positive responses from governments and social partners. The two supervisory bodies must continue to strive in this direction which is the key to a supervisory system that is effective and authoritative.

**27.** **The Worker Vice-Chairperson** recalled that in their separate but complementary roles, the two supervisory bodies form a part of an authoritative supervisory system that works for the effective implementation of international labour standards. He agreed with the Employer Vice-Chairperson on the

need to ensure respect for international labour standards in the context of the COVID-19 pandemic. The latter should not be used as a pretext for non-observance by some governments of their international labour standards obligations.

**28.** The Worker Vice-Chairperson indicated that information provided by workers' organizations to the Committee this year refers to an increased incidence of anti-union discrimination, the adoption of emergency measures that undermine labour standards, the failure to provide social protection to informal economy and precarious workers who in many instances are denied the right to organize and collective bargaining, the failure to provide occupational safety and health protection and the necessary resources for effective labour inspections as well as inadequate arrangements regarding working hours including in the context of homework and telework.

**29.** The Worker Vice-Chairperson referred to the situation of seafarers, who are on the frontline of the pandemic response and require immediate repatriation as they have completed their original tours of duty and in some cases have been on board for months outside their duty tour. Clarifying and reinforcing in an authoritative statement the obligation to comply with the MLC, 2006 as amended and the need for enforcement, especially under these crisis conditions, is absolutely crucial. In this regard, he welcomed the ILO Governing Body's resolution on maritime labour issues and the COVID-19 pandemic as well as UN General Assembly resolution on International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains, adopted on 1 December 2020.

**30.** The Worker Vice-Chairperson noted that governments will be called upon to take measures to address massive levels of unemployment resulting from the economic impact of the pandemic and underlined that these should not be hasty or ideological measures contrary to obligations under ratified international labour standards. He also noted that the pandemic will put a heavy burden on upcoming collective bargaining, in particular at inter-professional level.

**31.** He recalled that it was in the midst of a similar economic and social crisis that the ILO was founded and is therefore best suited to support its Member States in order to recover and build resilience. He agreed with the Employer Vice-Chairperson on the importance of monitoring compliance with international labour standards in the midst of the pandemic to ensure conformity with the terms of ratified Conventions, which is more important than ever to ensure that the recovery is rights-based. He emphasized that the risk of non-observance reinforces the crucial role of supervision as a fundamental means of ensuring compliance with obligations under ratified Conventions and promoting the ILO's mandate under the Constitution and the Declaration of Philadelphia. As such, the work of the respective supervisory bodies in monitoring and supervising the progress of Member States in the application of international labour standards remains absolutely critical. The Worker Vice-Chairperson emphasized that the Committee of Experts therefore needs all the trust, respect and support to continue to execute its mandate with the independence, authority and professionalism that has always characterized its work. He expressed the workers' great respect for the neutral and principled manner in which the Committee of Experts has been conducting its work and assured the Committee of their continuous support.

**32.** The Worker Vice-Chairperson congratulated the Committee of Experts for its enormous and very complex work and noted that the Committee's 2020 report was again of high quality. The established practice of examining measures taken in the follow-up to the recommendations of the Conference Committee on the Application of Standards and, tripartite committees under article 24 of the ILO Constitution as well as Commissions of Inquiry under article 26 of the Constitution ensures coherence in the supervisory system. Indeed, the Committee of Experts continues to be the backbone of the supervisory system.

**33.** The Worker Vice-Chairperson referred to information provided in the Committee's 2020 report on the first reports received after discussion in the Conference Committee in June 2019 on serious failures to report and the technical assistance provided by the Office. [4]This progress shows that continuous and effective collaboration between the Conference Committee, the Office and the Committee of Experts brings results and must be extended to other cases of serious failure to report.

**34.** He noted that in its last report the Committee of Experts selected only one double-footnoted case and asked for some feedback on the considerations that led the Committee of Experts to highlight only one case. He mentioned the Committee's statement on the disruptive impact of late submission of Article 22 reports on the supervisory mechanism [5] and asked whether an avenue to explore would be to capacitate the social partners to provide information to the Committee, especially where governments have failed to do so. He also welcomed the wide coverage given to the examination of technical Conventions in last year's report in view of the extension of the reporting cycle for technical Conventions

[4] 2020 CEACR General Report, ILC, 109th Session, Report III Part A (ILC.109/III(A)), para. 61.

[5] 2020 CEACR General Report, ILC, 109th Session, Report III Part A (ILC.109/III(A)), para. 45.

from five to six years. Being aware that in these times of crisis guidance on the conditions of work which have been most impacted will be quite relevant, he asked for an acceleration of the examination of technical Conventions and the release of additional observations in technical areas such as working time and occupational safety and health. He highlighted the importance of information received through Article 22 reports on the application of Conventions in practice including information on national jurisprudence, statistics and labour inspection [6] and asked for the Office to continue to provide assistance to governments and the social partners in this direction.

**35.** Finally, while an accessible and transparent Report is in no doubt in the interest of all constituents, he expressed some concern about the shortening of the Report and the need to reflect therein the information sent to the Committee of Experts by workers' organizations. He emphasized that there is need for full visibility and consideration to be given to serious allegations, including on technical Conventions, even more so in times of crisis. Finally, he underlined that detail and clarity are indeed critical in order to guide the constituents in their dialogue over necessary measures for the effective application of international labour standards.

**36.** In response to the comments of the two Vice-Chairpersons, the Committee recalled that the two Committees were created in 1926 through the same resolution of the International Labour Conference and are the key pillars of the ILO supervisory mechanism. Over the years, the two sister bodies have always viewed each other in that light despite occasional differences. The technical quality of the Committee's report has being providing a solid basis for the work of the Conference Committee thereby helping to uphold the legitimacy and authority of the ILO supervisory mechanism. At the same time, the Conference Committee's deliberations which are of a more political nature have helped the constituents obtain a better understanding of their obligations under ratified Conventions. The Committee would have not produced the same results if its technical comments had not been enhanced by the political impact of the discussions in the Conference Committee. The Committee of Experts gives full consideration to the Conference Committee discussions on the way in which Member States fulfil their obligations and takes concrete follow up action. The relationship between the two committees is therefore synergetic.

**37.** The two Committees are distinct but interdependent. Indeed, the Committee of Experts' independent nature has been an important factor in maintaining a constructive dialogue and overcoming occasional differences over the years. Also, the Committee's work plays a role in ensuring that international labour standards, as the foundation of national labour law across the world, maintain their relevance over time through comments linking the provisions inscribed in Conventions to the way in which they are applied in each national setting and in a continuously changing environment.

**38.** Fruitful cooperation between the two bodies has led to many cases of progress over the years, for example, through the recent abolition of the sponsorship system in Qatar under the Forced Labour Convention, 1930 (No. 29), and the abolition of children's forced labour in the annual cotton harvest in Uzbekistan under the Worst Forms of Child Labour Convention, 1999 (No. 182). It is hoped that the positive complementarities between the two Committees will lead the Conference Committee to give impetus to the General Survey on promoting employment and decent work in a changing landscape along with this year's Addendum which contains the Committee's guidance on measures for COVID-19 recovery through inclusive social dialogue, sustainable enterprises and decent work.

**39.** Synergies with the Conference Committee extend to the area of double footnotes. Indeed, while signalling cases of serious failure may be helpful for the Constituents in deciding which cases should be discussed in the Conference Committee, such public discussion enhances in return the political impact of the Observations made by the Committee of Experts. As already said, this synergetic process ultimately results in the strengthening of the supervisory system as a whole. The Committee has adopted certain criteria for the use of footnotes which have evolved over time, with the invaluable contribution of the Constituents. These appear in the Committee's General Report. It should be emphasized in this regard that the decision to include – or not – a case in the list to be discussed by the Conference Committee is a prerogative of that Committee's Vice-Chairpersons exercised in a context of dialogue and sometimes taking into account political considerations that have no place in the technical work performed by the Committee of Experts. Therefore, the Committee exercises restraint in its recourse to 'double footnotes' in deference to the Conference Committee's decisions as to the cases it wishes to discuss. The Committee has also made specific efforts to spread more evenly the double footnotes among fundamental, governance and technical Conventions. Nevertheless, the number of comments from the social partners regarding technical Conventions has been relatively low until now and sometimes these comments arrive too late to be considered in the same year. The proposals made by both Vice-Chairpersons to build the capacities of the social partners so that they can provide inputs to the Committee's work is very welcome. The use of the prerogative provided for in article 23(2) of the ILO Constitution is an excellent way to add

[6] 2020 CEACR General Report, ILC, 109th Session, Report III Part A (ILC.109/III(A)), paras 86–88.

valuable information on the gaps found in practice with regard to the implementation of technical Conventions.

**40.** The Committee has given further consideration to the statements of the Vice-Chairpersons. The Committee shares the Vice-Chairpersons' interest in ongoing dialogue and cooperation, while also understanding the importance of adhering to its mandate, which calls for impartial and technical analysis of how the Conventions are applied in law and practice by Member States. The persuasive value of the Committee's non-binding opinions and recommendations, and their ability to guide the actions of national authorities, are built on continuing dialogue with those national authorities, taking into account information provided by employers' and workers' organizations.

**41.** In performing its duties, the Committee remains cognizant of different national realities and legal systems, acting based on the impartiality, experience, and expertise of its members. This will be especially needed during periods of crisis, such as the present pandemic, where rigorous supervision of, and effective compliance with, International Labour Standards are of utmost relevance. In doing so, the Committee of Experts recognizes the importance of the continuous collaboration with the Conference Committee, while at the same time understanding that our efforts must be consonant with our distinct responsibilities and modalities of operation.

**42.** In conclusion, the Committee of Experts reiterates the importance of the synergy built in its relations with the Conference Committee and assures the Vice-Chairpersons that it is, as always, willing to keep developing its methods of work in the interest of transparency.

## Mandate

**43. The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO Member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by Member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.**

## Application of International Labour Standards in times of crisis: the importance of international labour standards and effective and authoritative supervision in the context of the COVID-19 pandemic

### Introduction: the COVID-19 crisis

**44.** The COVID-19 pandemic has presented the greatest public health crisis the world has seen during the ILO's centenary of existence and in its wake has followed a social and economic crisis of immense scale. Millions of people across the world have been exposed to the virus and to date almost 1.6 million people have died. To address the health crisis, many governments have adopted containment measures, including lockdowns and related restrictions in an effort to prevent the spread of the virus. These measures have had devastating impacts on the labour market. While demand has increased in certain sectors, such as in the health and food retail sectors, demand in other sectors, such as tourism, aviation and transport has all but collapsed. Millions of enterprises were closed and millions of jobs and livelihoods have been lost. While the crisis has affected enterprises in all sectors and of all sizes, micro, small and medium-size enterprises, lacking the necessary human and financial resources to weather a crisis of this magnitude, have been severely affected and many have simply closed their doors. [7]

[7] 2021 Addendum to the 2020 General Survey on promoting employment and decent work in a changing landscape.

**45.** According to the ILO Monitor of September 2020, [8] working hour losses are higher than previously estimated, amounting to 495 million full-time equivalent jobs. Predictably, specific groups in vulnerable situations have been the hardest hit by the socio-economic crisis, although the effects vary. For example, women, who in many countries have significantly higher rates of unemployment than men, have suffered greater rates of job loss generally. Moreover, women are also over-represented in high-risk sectors, such as in care work, where demand for their services has increased due to the pandemic. As a result, they have been required to work excessive hours while also continuing to shoulder the primary burden of unpaid care work. Other specific groups in vulnerable situations that have been severely affected in many countries include: young workers, migrant workers, persons belonging to racial, ethnic or linguistic minorities, older workers, domestic workers, indigenous and tribal peoples, people living with or affected by HIV or AIDS and rural workers. In addition to having been historically subject to discrimination and exclusion in employment and occupation, such groups are now also experiencing levels of violence, harassment, stigma and xenophobia. People belonging to these groups are generally concentrated in low-paid jobs in sectors most affected by the pandemic, and are often in precarious employment, including in the informal economy.

**46.** The ILO estimates that the crisis has devastated the employment and livelihoods of some 1.6 billion informal economy workers, representing 76 per cent of informal employment worldwide. [9] Physical distancing is frequently difficult, if not impossible for many informal economy workers, such as street and market vendors, domestic workers and home delivery workers. Many waste pickers might handle contaminated materials, while living and working in close proximity to others. If they continue to work, they usually have no access to personal protective equipment, sanitizing or hand-washing.

**47.** The measures adopted to contain the spread of the pandemic through quarantines, travel restrictions and lockdowns have resulted in a global recession and historical levels of unemployment. According to Word Bank estimates, [10] the impacts of the pandemic could push up to 150 million people into extreme poverty by 2021, causing the first increase in global poverty since 1998. Globally, acute hunger could double in 2020, affecting more than 260 million people, and the rise in extreme poverty is likely to reinforce disparities, magnify social and economic inequalities and generate new migration flows, a rise in stigma and discrimination and a widening digital divide. The crisis exposed the blind spots of pre-existing legal and policy frameworks exacerbating inequality and poverty and stalling, or even reversing, the progress made towards sustainable development and towards realizing the SDG8 vision of full, productive and freely chosen employment and decent work for all.

**48.** In this context, the ILO supervisory bodies, along with other human rights monitoring bodies, are called upon to offer guidance on the path to recovery and resilience as the custodians of human rights and the principle of leaving no one behind. [11] The central role of international labour standards as the tried-and-trusted foundation of the Decent Work agenda is to reaffirm the framework within which any response may be formulated in order to prevent regression and put recovery efforts on a stable footing, answering the call of the 2030 Development Agenda to leave no one behind. Standards and effective and authoritative supervision are a fundamental part of the solution to this crisis, in line with the guidance given in the Centenary Declaration on the Future of Work [12] for addressing the profound transformative changes of today's world of work.

## General principles

**49.** The Committee, taking note of the statements of other supervisory bodies in the UN system on the impact of the COVID-19 pandemic on fundamental human rights guarantees, [13] underlines the following:

(i) The crisis does not suspend obligations under ratified international labour standards; any derogations should be exercised within clearly defined limits of legality, necessity, and proportionality and non-discrimination. Similarly, the obligation to report on measures taken to give effect to ratified and non-ratified standards under articles 19, 22 and 35 of the ILO Constitution is not suspended. Member States are invited to seek the support of the Office, which is now more necessary

[8] ILO Monitor: COVID-19 and the world of work, 6th edition, 23 September 2020.

[9] ILO Press Release: As job losses escalate, nearly half of global workforce at risk of losing livelihoods, 29 April 2020.

[10] World Bank Press Release: COVID-19 to Add as Many as 150 Million Extreme Poor by 2021, 7 October 2020.

[11] Declaration of Philadelphia para. II(a).

[12] ILO, Centenary Declaration for the Future of Work, International Labour Conference, 108th (Centenary) Session, Geneva, 21 June 2019.

[13] The Committee notes in particular the UN Committee on Economic, Social and Cultural Rights Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights (E/C.12/2020/1). See the 2021 CEACR general report's section on collaboration with the UN.

than ever, in order to ensure that rights at work are not sacrificed as a result of the crisis and that the ILO's normative system fulfils its primary purpose of providing much needed guidance towards building back better.

(ii) Consistent with lawful measures to protect the health of the public, every effort should be made to prevent a downward spiral in labour conditions and pursue a virtuous cycle of recovery and development with the support of the Office and development partners fully respecting rights at work. Recovery measures weakening the protection afforded by labour laws will only further undermine social cohesion and stability and erode citizens' confidence that policy-makers heard the call for public policies to be responsive to people's needs. This is simply the wrong solution. An open global economy as the driver of recovery, is more than ever linked to respect for rights at work.

(iii) Social dialogue is critically important in all aspects of the development, implementation, monitoring and review of COVID-19 policy responses to ensure that these are grounded in respect for rights at work, tailored to national circumstances and benefiting from local ownership. The inclusive human-centred approach called for by the ILO Centenary Declaration for the Future of Work is needed now more than ever to protect workers' rights and rescue businesses and economies devastated by the severe health and socio-economic shockwaves caused by the pandemic.

(iv) The ILO has developed comprehensive policy guidance to support the efforts of governments, social partners and society in addressing the economic and social impact of the crisis and to ensure that they "build back better". It has also joined partnerships within the United Nations system in promoting the UN framework for the immediate socio-economic response to COVID-19 and its Key Indicators for monitoring human rights implications of COVID-19. The Committee calls for the national socio-economic response plans supported by the UN Country Teams, to be fully informed by and compliant with international labour standards and the principles underpinning them, notably tripartism and social dialogue.

## Key challenges for rights at work

**50.** At its current session, the Committee of Experts identified at least three key challenges emerging from the pandemic with regard to rights at work.

**51.** First, while the exponential accumulation of executive power in all countries is a natural consequence of the current circumstances, in order to safeguard national security and public health and while limitations on rights and freedoms serve a legitimate purpose to a large extent, they still need to comply with various parameters of international law, particularly:

(i) the principle of legality so that those constraints must not be arbitrary and must be based on law;

(ii) the principle of necessity requiring the Executive branch to prove that limitations are genuinely necessary according to the circumstances;

(iii) the principle of proportionality positing the need to test constraining measures as proportionate to the risks and exigencies of the situation;

(iv) the principle of non-discrimination against particular groups in society, while also respecting the corresponding requirements put forward in the respective human rights treaties.

**52.** With regard to civil liberties and freedom of association in particular, the Committee recalls its longstanding statement according to which crisis situations "cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity and on condition that any measures affecting [their] application are limited in scope and duration to what is strictly necessary to deal with the situation in question". [14] The Committee has consistently recalled, in the context of an economic crisis, the importance, as also highlighted by the Committee on Freedom of Association, of maintaining permanent and intensive dialogue with the most representative workers' and employers' organizations in particular in the process of adopting legislation, which may have an effect on workers' rights, including those intended to alleviate a serious crisis situation. [15] The Committee finally refers to the statements and comments made on this subject by a group of human rights experts on 16 March 2020 [16] and by the UN Human Rights Committee on 29 July 2020. [17]

[14] ILO, CEACR General Survey on Freedom of Association and Collective Bargaining, 1994, para. 41.

[15] CFA Compilation, 2018, paras 1437 and 1546.

[16] COVID-19: States should not abuse emergency measures to suppress human rights – UN experts. The statement provides that "emergency declarations based on the COVID-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health … and should not be used simply to quash dissent".

[17] UN International Covenant on Civil and Political Rights, Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, CCPR/C/GC/37 (2020), para. 2, describes the fundamental human right of peaceful assembly as "a

The Committee reverts to this question in the section of its general report dedicated to collaboration with the UN.

**53.** The second challenge is maintaining the universality, indivisibility interdependence and interrelation of all human rights both civil and political as well as economic, social and cultural rights. Human rights and international labour standards embody the universality and indivisibility of rights and freedoms. The Declaration of Philadelphia calls for "conditions of freedom and dignity, of economic security and equal opportunity" thereby giving concrete expression in the ILO Constitution to what came to be known as the interconnectedness of civil and political along with economic, social and cultural rights. [18]

**54.** Thirdly, the pandemic has exacerbated the plight of many groups who were already vulnerable to discrimination and marginalization. This is especially so where different grounds of discrimination intersect. As indicated at the outset for example, many women are disadvantaged in their access to the labour market as a result of gender discrimination and are also marginalized because they belong to disadvantaged groups During the pandemic, it has also been evident that the scourge of racial discrimination is on the rise and cause for serious concern. While COVID-19 does not discriminate, its effects and consequences may well do so.

## Occupational safety and health

**55.** The COVID-19 pandemic has presented an immense challenge to the protection of the safety and health of workers around the world, with certain sectors particularly hard hit. The national strategies adopted in this context have recognized that occupational safety and health (OSH) measures are a key pillar for successful public health responses and fundamental to decent work.

**56.** As the crisis unfolded, millions of workers continued to work and provided essential services for the community while facing significant personal occupational health risks. A stark dilemma has been that of working and consequently risking infection, or else, having no income nor food. The public health response to the pandemic has shone the spotlight on the right to health, but it has also exposed the strains on the "adequate protection for the life and health of workers in all occupations", called for in the Declaration of Philadelphia.

**57.** The crisis led to a rude awakening to the fact that the centrality of the right to health has not been given sufficient prominence in the policy discourse. The Committee wishes to defer to the UN Committee on Economic, Social and Cultural Rights, which has held that health is a fundamental human right indispensable for the exercise of other human rights. [19] The right to health encompasses safe and healthy working conditions as an underlying determinant of health. [20] Even in situations of public health emergency, certain core obligations must remain satisfied, including essential primary health care and the implementation of a national public health strategy that concerns the whole population and gives particular attention to all vulnerable or marginalized groups. [21]

**58.** The Committee notes that the pandemic has brought renewed recognition of the importance of international labour standards on OSH, including the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the Occupational Safety and Health Convention, 1981 (No. 155). The principles contained in these OSH standards have been shown to be more relevant than ever, such as: protecting workers from risks to their health, according to the principle of prevention, the highest priority; the importance of taking technical and organizational OSH measures; the necessity of providing personal protective equipment at no expenditure to the worker; the indispensability of adequate training and information; and the fundamental importance of assessing occupational risks.

**59.** The pandemic has further highlighted the key role of occupational health services, in the monitoring of workers' health and the provision of guidance for adapting workplaces procedures and practices and developing safety protocols. In this respect, the Committee recalls the important provisions of the Occupational Health Services Convention, 1985 (No. 161). The Committee also recalls that the Standards Review Mechanism Tripartite Working Group (SRM TWG), identified a gap in normative

valuable tool that can and has been used to recognize and realize a wide range of other rights, including economic, social and cultural rights".

[18] Declaration of Philadelphia, para. II(a).

[19] UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), Twenty-second session, E/C.12/2000/4 (2000), para. 1.

[20] UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 4.

[21] UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, paras 44 and 47.

coverage in the area of biological risks which may lead to the possible inclusion of a standard setting item on this question on the agenda of a future session of the International Labour Conference.

**60.** Meaningful consultations with the most representative organizations of employers and workers for the development of OSH policies, systems and programmes are central to ILO OSH standards. National mechanisms for such consultations have proven to be essential for the development and implementation of tailored measures during times of crisis with the support of employers and workers. The pandemic has also reinforced the value of cooperation and consultation with workers and their representatives at the workplace level in ensuring safety and health and developing measures adapted to each undertaking.

**61.** The Committee wishes to emphasize that ILO OSH standards cover, in relation to work, both the physical and mental elements affecting health. The considerable changes to working conditions and the modalities of work in 2020 have introduced or intensified certain psychosocial risks, and the Committee accordingly underlines the critical importance, when designing and implementing measures to emerge and recover from the crisis, of taking into account workers' mental health, their physical health and general well-being.

## Social security

**62.** The Committee observes the tremendous pressure placed by the COVID-19 pandemic on national health systems and the surge in demand for medical and allied care and services resulting from the spread of the virus, in all regions of the world. It also observes the significant impact of the crisis that followed on people's livelihoods, threatened by the economic slowdown and the restrictions put in place to curb the health crisis.

**63.** The fundamental role of universal social protection floors has become evidently clear from the outset of the pandemic. Only 29 per cent of the global population enjoys access to comprehensive social security, while the remaining 71 per cent are not at all, or only partially, protected.

**64.** Based on the information at its disposal, [22] the Committee observes that, from the early stages, social protection emerged as a fundamental component of the COVID-19 crisis response and a means to mitigate its economic and social impact. Understandably, countries with strong social protection systems, underpinned by a well-developed and robust healthcare system, have been able to cope with the consequences of the COVID-19 pandemic and to ramp up support to their impacted populations quickly and effectively. The response has been less consistent in countries with fragmented social protection systems, mostly found in the developing world. These have not shown the same level of preparedness in coping with the crisis, due to the absence of universal health coverage, unemployment insurance and sickness benefits for their populations, working mostly in the informal economy.

**65.** The Committee commends the governments concerned for having taken a vast array of measures (e.g. reinforcement of the health care system, provision of supplementary sickness and unemployment benefits and payments to workers and families in need, recognition of the occupational origin of COVID-19 to facilitate the compensation of persons infected in the course of their work). Moreover, these measures were taken within a short time frame, to increase the income and health protection of the population in face of the pandemic and to contain its devastating impact on people and on the economy.

**66.** The Committee notes that, while many of these measures go beyond the minimum standards set out in the Social Security (Minimum Standards) Convention, 1952 (No. 102), they tend to be aligned with the more advanced standards set out in other up-to-date social security Conventions, [23] and to implement, to some extent, the guidance provided by social security Recommendations, [24] as regards the scope of personal and material coverage achieved. The importance gained by these social security standards of the latest generation in the context of the COVID-19 pandemic highlights their continued relevance in guiding state action, even when not ratified or of a non-binding character.

**67.** It is to be expected that the effects of the pandemic will worsen in the immediate future, and be felt for some time. This may warrant extending or adjusting the scope of protection and duration of current measures or taking additional measures, as need be, to strengthen the social protection of all persons in need, in particular the most vulnerable, and enable societies to better cope with the impact of

[22] As provided by governments in their reports on the application of ILO Conventions and the European Code of Social Security, and as compiled by the ILO in a series of publications available on the dedicated web pages Social Protection response to the COVID-19 crisis and State practice to address COVID-19 infection as a work-related injury.

[23] Notably, the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), the Medical Care and Sickness Benefits Convention, 1969 (No. 130), and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

[24] Notably, the Medical Care and Sickness Benefits Recommendation, 1969 (No. 134), the Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176), and the Social Protection Floors Recommendation, 2012 (No. 202).

the crisis. Mindful of the costs associated with these measures, which are likely to be needed for quite some time, and of the challenge for member States to secure appropriate financing over time, the Committee recalls the principles of progressivity, social solidarity, solidarity in financing and economic, financial and fiscal sustainability, embedded in ILO social security standards.

**68.** The Committee further recalls the importance of social dialogue and tripartite participation, as well as consultations with representatives of other persons concerned, in the formulation and implementation of social security measures, including measures taken in response to the pandemic. Finally, the Committee hopes that ILO Member States, in collaboration with social partners and other stakeholders, will take this opportunity to strengthen their health care and social security systems, guided by international labour standards.

## Employment policy

**69.** In its 2021 Addendum to the 2020 General Survey on promoting employment and decent work in a changing landscape, and in the general observation made in the Committee's 2021 report on the Employment Policy Convention, 1964 (No. 122), the Committee highlights the added-value of the guidance contained in the body of ILO employment instruments to lay the foundations for an inclusive, sustainable response and recovery. In adopting the ILO Centenary Declaration for the Future of Work in June 2019, the International Labour Conference called for the ILO to further develop its human-centred approach to the future of work, through, inter alia, developing effective policies aimed at generating full, productive and freely chosen employment and decent work opportunities for all.

**70.** The Committee observes that the COVID-19 crisis presents both enormous challenges as well as valuable opportunities to shape a fairer, more inclusive and secure future of work through the adoption and effective implementation of policy measures based on international labour standards and the rule of law. It stresses, however, that governments cannot tackle these enormous challenges alone: social dialogue and tripartite consultation are essential tools to recovery. The social partners, with their in-depth knowledge of the needs and realities of both businesses and workers, can contribute to the development and adoption of effective preventive measures to limit the spread of COVID-19 in workplaces, as well as of comprehensive and targeted response and recovery measures that take into account the needs and perspectives of all parties concerned. Inclusive dialogue with individuals and groups concerned by measures to be taken, and with civil society organizations where appropriate, can go a long way to building a climate of trust and ensure the development, adoption, implementation and review of measures that are both evidence- and consensus-based and promote increased ownership among all stakeholders. The development of a new generation of gender-responsive inclusive policies and programmes based on the guidance provided in the employment instruments can help to ensure a sustainable recovery from the crisis that promotes and protects job growth and decent work, creates an enabling environment for sustainable enterprises and strengthens inclusive social dialogue processes. In doing so, the employment instruments can contribute to ensuring resilient societies, economies and institutions capable of building a brighter, more inclusive future of work.

## Freedom of association

**71.** While recalling its general statement regarding civil liberties and freedom of association in times of crisis mentioned in paragraph 52, the Committee observes that in the context of the pandemic, physical distancing measures and restrictions on freedom of assembly have affected, directly or indirectly, the realization of the right to organize and to collective bargaining. [25]Situations of confinement made it more difficult for workers to have direct contact with their representatives, and at times impeded elections to renew the terms of office of union leaders and the processes of consultation and collective bargaining. In this regard, the Committee notes the proactive measures taken in some countries to facilitate the continued exercise of collective rights in the context of the constraints imposed by the pandemic, including: the extension of the mandates of trade union representatives; the adjustment of collective bargaining deadlines; the increased use of videoconferencing to ensure the continuity of the activity of social dialogue and collective bargaining bodies; and the adaptation of the facilities granted to unions in their dealings with teleworkers.

**72.** The Committee notes that in some countries, exceptional measures have led to temporary restrictions including the setting aside of collective bargaining mechanisms and the resulting agreements. The Committee considers that these exceptional measures are only admissible in the event of an acute crisis and that, by their nature, they must be limited in time, strictly adapted and proportionate to the objective constraints they address, include guarantees for the workers most affected and be consulted with the most representative organizations of employers and workers. At the same time, the Committee notes that in several countries collective bargaining mechanisms have played an important role in

[25] CEACR General Survey on Collective Bargaining in the Public Service, 2013, para. 215 et suite.

identifying responses to the crisis, for example through the signing of agreements defining the modalities of temporary reduction of working time and the preservation of workers' incomes.

**73.** In the context of the major economic difficulties generated by the pandemic, the Committee also notes the importance of carefully examining the effects of recent reforms establishing increased possibilities for derogation, by agreements at the enterprise level, of protective provisions set out in higher-level agreements. As indicated in a recent ILO study, "collective bargaining that takes into account the particular circumstances of specific enterprises or sectors is best placed to strike the right balance, and to re-evaluate the adequacy of wages in some mostly female-dominated low-paid sectors which have proved to be essential and of high social value during the current crisis". [26]

**74.** The Committee finally recalls that the COVID-19 crisis should not be used as a pretext for acts of anti-union discrimination.

**75.** In light of these developments and in line with the guidance provided by the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), the Committee underlines the importance of trade union and collective bargaining rights in providing fair and robust solutions to the current health, economic and social crisis and in ensuring, in this context, respect for all rights guaranteed by ILO standards.

## Child labour including its worst forms

**76.** As indicated in the general observation made in the Committee's 2021 report on the Worst Forms of Child Labour Convention, 1999 (No. 182), global estimates indicate that between 42 and 66 million children could fall into extreme poverty as a result of the pandemic, adding to the 386 million children who were already in extreme poverty in 2019. The Committee applauds the universal ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), by all Member States, which has also been instrumental in bringing the ratification rate of Convention No. 138 to over 90 per cent. Nevertheless, the Committee is concerned that without special efforts to prevent children from being pushed into child labour and its worst forms in the midst of the pandemic, not only years of progress towards eliminating child labour and its worst forms may be reversed, but the very foundation of an inclusive long-term recovery be undermined. The Committee calls on ILO Member States to strive towards safeguarding the precious progress made since the adoption of Conventions Nos 138 and 182 and making the recovery an opportunity to build back better and stronger.

## Forced labour

**77.** The pandemic exacerbates poverty in its many dimensions and exposes those living in poverty to coercion and the risk of falling victim to forced labour including trafficking in persons, debt bondage, and other forms of forced labour. It also contributes to worsening the situation of people who were already in situations of, or at risk of, forced labour before the COVID-19 outbreak including people trapped in slavery-like situations, discrimination, marginalization and limited or no social and labour protection.

**78.** The Committee wishes to recall that under human rights treaties, some rights, such as the right to life and freedom from slavery, including trafficking in persons, are non-derogable and cannot be constrained even in times of public emergency. [27] Even though Convention No. 29 allows for derogations in the event of an epidemic that would endanger the existence of the whole or part of the population, during these exceptional cases, the duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation. Moreover, it may be appropriate to recall that the Abolition of Forced Labour Convention, 1957 (No. 105), requires ratifying Members not to resort to any form of compulsory or forced labour for purposes of economic development, as a means of labour discipline, as a punishment for having participated in strikes, or as a means of racial, social, national or religious discrimination. The Convention also protects persons "holding or expressing political views or views ideologically opposed to the established political, social or economic system" from sanctions involving compulsory labour. Any such restrictions should only be implemented in circumstances of extreme gravity and should be limited in time and scope to what is strictly required to meet the specific emergency situation. [28]

## Equality and non-discrimination

**79.** The consequences of the pandemic increase the risk of eliminating decades of progress on equality for women and men in the world of work. In this year's Addendum to the 2020 General Survey on promoting employment and decent work in a changing landscape, the Committee observes that the

[26] ILO Global Wage Report, 2020-21, 18–19.

[27] Article 4 of the International Covenant on Civil and Political Rights (ICCPR).

[28] ILO, Key provisions of international labour standards relevant to the evolving COVID-19 outbreak, May 2020, 29–30.

pandemic has affected women and men differently, as working from home may impose a double burden on workers with family responsibilities, particularly on women, due to their unpaid care work. [29]

**80.** Women are over-represented in the health and social sector and have undoubtedly been more affected by job losses, including the loss of social security protection. The Committee highlights the need to develop policy responses that are both effective and inclusive, to promote and realize equality of opportunity and treatment for both women and men. [30]

**81.** As noted above, the context of the pandemic has also had a disproportionate impact on groups in vulnerable situations and highlighted that leaving no one behind is even more essential during a time of crisis. In emerging from the crisis and regenerating the world of work, it is imperative that progress is achieved in an inclusive manner.

**82.** Noting reports of a sharp increase in the incidence of violence and harassment as a result of the pandemic, the Committee welcomes the entry into force of the Violence and Harassment Convention, 2019 (No. 190). It hopes that legal and policy responses to the COVID-19 pandemic at all levels of the economy, adopted in consultation with the social partners and other stakeholders, will mainstream measures to promote and ensure equality and non-discrimination in employment and occupation and freedom from violence and harassment in the world of work.

## Labour inspection

**83.** The Committee notes that a sharp decrease in the number of inspections has been reported as a result of the pandemic. Nevertheless, labour inspectorates continue to play an important role in national responses to COVID-19, by monitoring compliance with protective measures aimed at reducing transmission of the virus among employees; providing guidance to workers and employers; and creating hotlines for workers, trade unions, and the public to report concerns about workplace practices. The public health crisis is leading many inspectorates to redefine their regular priorities, in the process developing new operational procedures and making greater use of technology to continue functioning. Further, many have adopted important protective measures to ensure the safety and health of labour inspectors.

**84.** In a number of jurisdictions, the pandemic is resulting in a substantial reduction in inspection visits to workplaces. Most labour inspectorates have scaled back on planned activities due to the need to protect the safety and health of inspectors even though this is a time when their advisory and enforcement role is more needed than ever. However, the Committee emphasizes that moratoria imposed on labour inspections in certain cases or the exemption of certain types of enterprises from labour inspections are extremely disconcerting and risk undermining the rule of law. Going forward, inspection systems may be adversely affected by budgetary reductions linked to decreased public spending. The Committee recalls in this respect the important framework provided by ILO labour inspection Conventions Nos 81 and 129 for ensuring that labour inspectorates have an adequate number of staff, with appropriate conditions for hiring, training and service, with the necessary resources to perform their functions. It calls for the necessary resources, including personal protective equipment, to be made available to enable the labour inspectorate to accomplish its fundamental role in the governance of the labour market, including in the informal economy.

## Wages

**85.** According to a recent ILO report, in the near future, the economic and employment consequences of the COVID-19 crisis are likely to exert massive downward pressure on workers' wages. Adequate and balanced wage policies, arrived at through strong and inclusive social dialogue, are needed to mitigate the impact of the crisis and support economic recovery. In planning for a new and better "normal" after the crisis, adequate minimum wages – statutory or negotiated – could help to ensure more social justice and less inequality. [31] In this context, the Committee wishes to reiterate the critical importance of those international labour standards that seek to ensure decent minimum wage levels and the protection of wages, particularly the Minimum Wage Fixing Convention, 1970 (No. 131), the Protection of Wages Convention, 1949 (No. 95), and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173). The Committee trusts that the crisis responses adopted or envisaged by governments in the field of income security will be fully consonant with the principles underlying these Conventions.

## Working time

**86.** In this year's Addendum to the 2020 General Survey, the Committee observes the exponential increase in recourse to telework, platform work, home work, shift work and similar working modalities as

[29] 2021 Addendum to the 2020 General Survey on promoting employment and decent work in a changing landscape, para. 169.

[30] 2021 Addendum to the 2020 General Survey, para. 230.

[31] ILO Global Wage Report, 2020-21, 18–19.

measures to prevent the spread of the COVID-19 pandemic. Noting the range of challenges posed by telework, the Committee suggests in its conclusions that, to ensure that telework as a work modality meets the needs of both enterprises and workers and at the same time provides adequate protections and safeguards, the ILO constituents may wish to engage in further reflection to consider how best to address issues related to telework, such as working time and the right to disconnect from work, the allocation of rights and responsibilities with respect to the costs of teleworking, occupational safety and health requirements and privacy rights, among others. [32]

## Frontline workers

**87.** Many frontline workers in healthcare and key workers ensuring continuity of functions critical to economic and national security (such as seafarers and other transport workers, rural workers, food supply workers or law enforcement workers) have continued to provide essential public goods during the pandemic. The Committee refers to the general observations made in its 2021 report on Convention No. 122, Convention No. 182 and the Maritime Labour Convention, 2006, as amended, as well as the 2021 Addendum to the 2020 General Survey on promoting employment and decent work in a changing landscape. It emphasizes the need to ensure that these categories of workers benefit from the full legal protection to which they are entitled under international law. [33]

## Indigenous peoples

**88.** While recognizing the gravity of the impact of the pandemic on the population as a whole, and the efforts made by governments to address the resulting crisis, the Committee considers that the special vulnerability and socio-economic conditions faced by indigenous peoples should be taken into consideration.

**89.** While indigenous peoples have a high rate of participation in employment, they are more likely to be in the informal economy and the quality of their employment is often reflected by poor working conditions, low pay and discrimination. They are nearly three times more likely to be in extreme poverty compared to their non-indigenous counterparts. [34] Furthermore, they still experience barriers in accessing safe water, proper sanitation as well as public health systems and social protection programmes.

**90.** The Committee is concerned that these pre-existing barriers have contributed to indigenous and tribal communities being disproportionately affected by the health and socio-economic effects of the crisis [35] and this may lead to deepening the marginalization of members of these communities. The Committee considers that the vulnerable situation confronting indigenous peoples needs to be addressed as a matter of urgency. The Committee acknowledges that some countries have taken into consideration the specific and at the same time diverse realities of indigenous and tribal communities in their response to the COVID crisis. [36] It recalls that the full implementation of the rights recognized in the Indigenous and Tribal Peoples Convention, 1989 (No. 169), should guide governmental action in its response to the crisis. Indeed, Convention No. 169 provides the framework for the adoption of an inclusive approach that leaves no one behind. This includes ensuring, inter alia, that indigenous and tribal peoples are consulted when legislative or administrative measures may affect them; that their right to land and access to natural resources is fully recognized; that their cultural identity, customs and tradition are respected; that health services are effectively made available to them; and that they have access to information in their own indigenous language. In light of these considerations, the Committee calls on governments to strive to ensure that indigenous peoples benefit from effective and culturally appropriate protection against the COVID-19 pandemic and its consequences.

[32] 2021 Addendum to the 2020 General Survey on Promoting Employment and Decent Work in a Changing Landscape, Part IV, para. 299. In its 2018 General Survey, the Committee also observed that while telework and the platform economy may offer certain flexibility to workers, these working arrangements may also bring a number of disadvantages for workers, including encroachment on non-working time and rest periods, the unpredictability of working hours, income insecurity and stress associated with the (perceived) need to always be available for, or connected to, work and lost labour protections if they are classified as independent contractors. These stressors can have significant impacts on workers' well-being, including on their mental health, which may be compounded during the current period of global uncertainty arising from the pandemic and its aftermath. ILC Report III(Part B): General Survey concerning working-time instruments – Ensuring decent working time for the future, para. 758.

[33] The Committee also recalls in this regard the Domestic Workers Convention, 2011 (No. 189), the Home Work Convention, 1996 (No. 177), and the Nursing Personnel Convention, 1977 (No. 149).

[34] ILO, Implementing the ILO Indigenous and Tribal Peoples Convention No. 169 – Towards an inclusive, sustainable and just future, ILO, 2019.

[35] Gabriela Balvedi Pimentel and Maria Victoria Cabrera Ormaza, *The impact of COVID-19 on indigenous communities: Insights from the Indigenous Navigator* (ILO, October 2020).

[36] 2021 Addendum to the 2020 General Survey, paras 275 to 286 relating to indigenous and tribal peoples.

## Concluding remarks

**91.** The Committee would appreciate receiving information regarding the measures adopted by governments to meet the above obligations.

# II. Compliance with standards-related obligations

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

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

### Reporting arrangements

**93.** In accordance with the decision taken by the Governing Body at its 258th Session (November 1993), the reports due on ratified Conventions should be sent to the Office between 1 June and 1 September of each year. Due to the special circumstances prevailing this year, the Governing Body decided to exceptionally modify this deadline and invited Member States to send their reports **from 15 September to 1 October 2020**. [37]

**94.** The Committee recalls that detailed reports should be sent in the case of first reports (a first report is due after ratification) or when specifically requested by the Committee of Experts or the Conference Committee. Simplified reports are then requested on a regular basis. [38] The Committee also recalls that, at its 306th Session (November 2009), the Governing Body decided to increase from two to three years the regular reporting cycle for the fundamental and governance Conventions. At its 334th Session (October–November 2018) the Governing Body decided to increase the reporting cycle from five to six years for all other Conventions.

**95.** In addition, reports may be requested by the Committee outside of the regular reporting cycle. [39] Reports may also be expressly requested outside of the regular reporting cycle by the Conference Committee or the Governing Body. At each session, the Committee also has to examine reports requested in cases where a government had failed to send a report due for the previous period or to reply to the Committee's previous comments.

[37] Governing Body 338th Session (March 2020). Decision concerning Member States reporting obligations and the work of the CEACR and the Committee on the Application of Standards as a result of the deferral of the 109th Session of the International Labour Conference to 2021, Institutional Section Record of decisions.

[38] In 1993, a distinction was made between detailed and simplified reports. As explained in the report forms, in the case of simplified reports, information need normally be given only on the following points: (a) any new legislative or other measures affecting the application of the Convention; (b) replies to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations; and (c) replies to comments by the supervisory bodies. At its 334th Session, the Governing Body adopted a new report form to facilitate reporting by governments when they are expected to provide simplified reports (document GB.334/INS/5).

[39] General Report, para. 123 et seq.

## Compliance with reporting obligations

**96.** This year a total of 2,004 reports (1,796 reports under article 22 of the Constitution and 208 reports under article 35 of the Constitution) were requested from governments on the application of Conventions ratified by Member States, compared to 2,007 reports last year. At the end of the present session of the Committee, 859 reports were received by the Office corresponding to 42.9 per cent of the reports requested. [40] Last year, the Office received a total of 1,419 reports, representing 70.7 per cent. The Committee notes in particular that 5 of the 20 first reports due on the application of ratified Conventions were received by the time the Committee's session ended (last year, 45 of the 70 first reports due had been received).

**97.** The Committee observes that that there was a sharp decrease in the number of reports received by the deadline of 1 October this year in relation to previous years (531 reports representing 26.5 per cent of reports received, compared with 39.6 per cent at its previous session). This has been a challenging year for many governments resulting in a limited capacity to report. While noting the complexity of the situation prevailing across the world, the Committee recalls that the ILO Constitution does not provide for any circumstances in which the obligation to report under articles 19, 22 and 35 may be suspended.

**98. The Committee would like to express its appreciation to the governments which made special efforts to ensure compliance with their reporting obligations in the midst of the pandemic and invites all Member States to make every effort to send the reports due under articles 19, 22 and 35 of the ILO Constitution including by seeking available ILO technical assistance to help them comply with their constitutional obligations.**

**99.** The Committee recalls that at its previous session it decided to identify more clearly article 22 reports received after the deadline, the examination of which might be deferred due to their late arrival. This year, 322 out of 2,004 reports due (16.1 per cent) were received after this deadline.

**100.** As a general matter, the Committee wishes to recall that late submission of reports disturbs the sound operation of the supervisory mechanism as the examination of some of these reports in subsequent Committee sessions prevents the experts from fully focusing on the specific thematic areas due for discussion each year and also prevents governments and the social partners from obtaining timely feedback on their reports. ***The Committee is therefore bound to reiterate its request that Member States make a particular effort to ensure that their reports are submitted on time and in time next year and that they contain all the information requested so as to allow a complete examination by the Committee. It urges in particular those Member States who have received Office assistance in this regard, to make special efforts to ensure timely submission.***

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

**102.** None of the reports due have been sent for the past two or more years from the following **16** countries: **Belize, Congo, Djibouti, Dominica, Equatorial Guinea, Grenada, Guyana, Lebanon, Madagascar, Netherlands: Aruba, Netherlands: Sint Maarten, Nigeria, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, United Republic of Tanzania – Tanganyika** and **Vanuatu**. ***The Committee urges the Governments concerned to make every effort to supply the reports requested on ratified Conventions.***

**103.** ***In particular, the Committee draws the attention of the following Governments to the fact that if the reports are not received in time for examination by the Committee at its next session, it may proceed to examine the application of the Conventions concerned on the basis of public information at its disposal: Dominica, Equatorial Guinea, Grenada and Saint Lucia.***

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

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

| State | Conventions Nos |
|---|---|
| Albania | – Since 2018: MLC, 2006 |
| Congo | – Since 2015: Convention No. 185,<br>– Since 2016: MLC, 2006, and<br>– Since 2018: Convention No. 188 |
| Equatorial Guinea | – Since 1998: Conventions Nos 68 and 92 |
| Gabon | – Since 2016: MLC, 2006 |
| Guinea | – Since 2019: Conventions Nos. 167, 176, 187 and 189 |
| Jamaica | – Since 2018: Convention No. 189 |
| Maldives | – Since 2016: MLC, 2006 |
| Romania | – Since 2017: MLC, 2006 |
| Sao Tome and Principe | – Since 2019: Convention No. 183 |
| Sri Lanka | – Since 2019: MLC, 2006 |
| Tunisia | – Since 2019: MLC, 2006 |
| United Republic of Tanzania | – Since 2019: Convention No. 185 |

**105.** ***The Committee urges the governments concerned to make a special effort to supply the first reports due.***

**106.** ***In particular, the Committee draws the attention of the following Governments to the fact that if the first report is not received in time for examination by the Committee at its next session, it may proceed to examine the application of the Convention in the countries concerned on the basis of public information at its disposal: Congo, Equatorial Guinea, Gabon, Maldives and Romania.***

**107.** The Committee, like the Conference Committee, emphasizes the particular importance of first reports, which provide the basis on which the Committee makes its initial assessment of the application of the specific Conventions concerned. The Committee is aware that, where no reports have been sent for some time, it is likely that administrative or other problems are at the origin of the difficulties encountered by governments in fulfilling their constitutional obligations. This year, the COVID-19 pandemic has been an additional factor aggravating such difficulties. [41] The Committee would like to express its appreciation to the governments which submitted five first reports this year. ***It recalls the importance for governments to request assistance from the Office, and for such assistance to be provided rapidly, for the preparation of first reports.***

**108.** This year all countries provided information concerning communication of reports to workers' and employers' organizations in all or the majority of their reports. The Committee recalls that, in accordance with the tripartite nature of the ILO, compliance with this constitutional obligation is intended to enable representative organizations of employers and workers to participate fully in supervision of the application of international labour standards. [42] If a government fails to comply with this obligation, these organizations are denied their opportunity to comment and an essential element of tripartism is lost. In the context of COVID-19, participation by employers' and workers' organizations in the supervision of international labour standards is even more important than in regular times. ***The Committee calls on all Member States to continue to discharge their obligation under article 23, paragraph 2, of the Constitution.***

## Replies to the comments of the Committee

**109.** Governments are requested to reply in their reports to the observations and direct requests made by the Committee. This year, they were asked moreover to provide supplementary information to last year's reports, taking into account developments which may have taken place in the meantime.

[41] In certain exceptional cases, the absence of reports is a result of more general difficulties related to the national situation, which prevents the provision of any technical assistance by the Office.

[42] General Report, para. 140 et seq.

**110.** This year, no information has been received as regards all or most of the observations and direct requests of the Committee to which a reply was requested for the following countries: **Afghanistan, Antigua and Barbuda, Bangladesh, Barbados, Belize, Plurinational State of Bolivia, Chad, Congo, Djibouti, Dominica, Equatorial Guinea, Gabon, Grenada, Guinea-Bissau, Guyana, Haiti, India, Iraq, Kiribati, Kyrgyzstan, Lebanon, Liberia, Madagascar, Malawi, Maldives, Mauritius, Montenegro, Mozambique, Netherlands (Aruba and Sint Maarten), Nigeria, Papua New Guinea, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Sierra Leone, South Sudan, Syrian Arab Republic, United Republic of Tanzania (Tanganyika), Tuvalu, Ukraine, Uganda, Vanuatu** and **Zambia.**

**111.** The Committee notes with ***concern*** that the number of comments to which replies have not been received remains significantly high. The Committee underlines that the value attached by ILO constituents to the dialogue with the supervisory bodies on the application of ratified Conventions is considerably diminished by the failure of governments to fulfil their obligations in this respect. ***The Committee urges the countries concerned to provide all the information requested and recalls that they may avail themselves of the technical assistance of the Office in this regard.***

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

**112.** As the functioning of the supervisory system is based primarily on the information provided by governments in their reports, both the Committee and the Conference Committee considered that failure by Member States to fulfil their obligations in this respect has to be given the same level of attention as non-compliance relating to the application of ratified Conventions. The two Committees have therefore decided to strengthen, with the assistance of the Office, the follow-up given to these cases of failure. Due to the deferral of the 109th Session of the Conference, a discussion on the information contained in the Committee's 2020 report on this matter will take place at the next session of the Conference in June 2021.

**113.** The Committee accordingly reiterates paragraph 61 of its 2020 report according to which pursuant to the discussions of the Conference Committee in June 2019 and technical assistance provided by the Office, [43] seven out of 14 first reports on which urgent appeals were issued have been received. [44]

**114.** The Committee welcomes the fruitful collaboration that it maintains with the Conference Committee on this matter of mutual interest which is essential to the proper discharge of their respective tasks. It asks the Office to maintain the sustained technical assistance that it has been providing to Member States in this respect.

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

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

**116.** The Committee wishes to inform Member States that it examined all reports that were brought to its attention.

### Observations and direct requests

**117.** First of all, the Committee considers that it is worthy of note that in 81 cases it has found, following examination of the corresponding reports, that no further comment was called for regarding the manner in which a ratified Convention had been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form of either "observations", which are reproduced in the report of the Committee, or "direct requests", which are not published in the Committee's report, but are communicated directly to the governments concerned and

[43] See report of the Committee on the Application of Standards, International Labour Conference, 108th Session, Geneva, 2019, para. 298.

[44] Kiribati (Convention No. 185), Maldives (Conventions Nos 100 and 185), Nicaragua (MLC, 2006), Saint Vincent and the Grenadines (MLC, 2006), and Somalia (Conventions Nos 87 and 98). In the meantime, four additional first reports have been received following urgent appeals: Angola (Convention No. 188), Somalia (Convention No. 182) and Timor Leste (Conventions Nos 100 and 111).

are available online. [45] Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They point to important discrepancies between the obligations under a Convention and the related law and/or practice of Member States. They may address the absence of measures to give effect to a Convention or to take appropriate action following the Committee's requests. They may also highlight progress, as appropriate. Direct requests allow the Committee to be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature. They can also be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which the obligations are fulfilled. Direct requests are also used to examine the first reports supplied by governments on the application of Conventions.

**118.** This year the Committee made 556 observations and 1,110 direct requests. The Committee's observations appear in Part II of this report, together with, for each subject, a list of direct requests. An index of all observations and direct requests, classified by country, is provided in Appendix VII to the report.

**119.** In addition, the Committee made three general observations on the Employment Policy Convention, 1964 (No. 122), the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Maritime Labour Convention, 2006, as amended (MLC, 2006).

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

**120.** The Committee examines the follow-up to the conclusions of the Committee on the Application of Standards as this information forms an integral part of the Committee's dialogue with the governments concerned. This year, the Committee has examined the follow-up to the conclusions adopted by the Committee on the Application of Standards during the last session of the International Labour Conference (108th Session, June 2019) in the following cases:

List of cases in which the Committee has examined the **follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)**

| State | Conventions Nos | Page Nos |
|---|---|---|
| Algeria | 87 | 62 |
| Plurinational State of Bolivia | 131 | 677 |
| Brazil | 98 | 113 |
| Egypt | 87 | 181 |
| Ethiopia | 138 | 363 |
| Fiji | 87 | 193 |
| Honduras | 87 | 213 |
| Kazakhstan | 87 | 223 |
| Myanmar | 29 | 284 |
| Philippines | 87 | 231 |
| Serbia | 81/129 | 627 |
| Tajikistan | 111 | 567 |
| Turkey | 87 | 244 |
| Uruguay | 98 | 256 |
| Zimbabwe | 87 | 264 |

[45] Observations and direct requests are accessible through the NORMLEX database, on the ILO website (www.ilo.org/normes).

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

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

List of cases in which the Committee has examined the **measures taken by governments to give effect to the recommendations of commissions of inquiry** (complaints under article 26)

| State | Conventions Nos |
|---|---|
| Belarus | 87, 98 |
| Myanmar | 29 |
| Qatar | 29 |
| Bolivarian Republic of Venezuela | 26, 87, 144 |
| Zimbabwe | 87, 98 |

List of cases in which the Committee has examined the **measures taken by governments to give effect to the recommendations of tripartite committees** (representations under article 24)

| State | Conventions Nos |
|---|---|
| Peru | 29 |
| United Arab Emirates | 29 |
| United Kingdom of Great Britain and Northern Ireland | 29 |

## Follow-up given to legislative aspects referred by the Committee on Freedom of Association

**122.** In accordance with established practice, the Committee also examines the legislative aspects referred to it by the Committee on Freedom of Association. At the latter's request, the Committee decided to indicate these cases in the following table.

List of cases in which the Committee has examined the **follow-up given to legislative aspects referred to it by the Committee on Freedom of Association**

| State | Conventions Nos |
|---|---|
| Brazil | 151 |
| Chile | 87, 98 |
| El Salvador | 87 |
| Kazakhstan | 87 |
| Philippines | 87 |
| Zimbabwe | 87 |

## Special notes

**123.** As in the past, the Committee has indicated by special notes (traditionally known as "footnotes") at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has deemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2021.

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

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

– the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers' health, safety and well-being, as well as any adverse impact, including at the international level, on workers and other categories of protected persons;

– the persistence of the problem;

– the urgency of the situation; the evaluation of such urgency is necessarily case specific, according to standard human rights criteria, such as life threatening situations or problems where irreversible harm is foreseeable; and

– the quality and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

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

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

**128.** This year, the Committee has requested governments to supply full particulars to the Conference at its next session in 2021 in the following cases:

Case in which the Committee has requested the government to **supply full particulars to the Conference** at its next session in June 2021

| State | Convention No. |
|---|---|
| Belarus | 87 |
| Ghana | 182 |
| Tajikistan | 81 |
| Turkmenistan | 105 |

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

List of the cases in which the Committee has requested
**full reply to its comments outside of the reporting cycle**

| State | Conventions Nos |
|---|---|
| Algeria | 87, 98 |
| Armenia | 17 |
| Bahamas | 87 |
| Bangladesh | 81, 87 |
| Belgium | 87 |
| Brazil | 151 |
| Burundi | 26 |
| Cameroon | 87 |
| China – Hong Kong Special Administrative Region | MLC, 2006 |
| Colombia | 98 |
| Comoros | 87 |
| Congo | MLC, 2006 |
| Cuba | 110 |
| Democratic Republic of Congo | 144 |
| Ecuador | 87, 95/131, 98 |
| Egypt | 98 |
| France | 98 |
| Gabon | MLC, 2006 |
| Indonesia | MLC, 2006 |
| Islamic Republic of Iran | 111 |
| Ireland | 189 |
| Jordan | MLC, 2006 |
| Kyrgyzstan | 81, 95/131 |
| Netherlands – Curaçao | MLC, 2006 |
| Pakistan | 98 |
| Portugal | MLC, 2006 |
| Republic of Moldova | 152 |
| Saint Vincent and the Grenadines | MLC, 2006 |
| Slovenia | MLC, 2006 |
| Sri Lanka | 98 |
| Turkey | 98, 115/119/127/155/161/167/176/187 |
| Ukraine | 81/129/150, 95/131/173, 119/120/139/155/161/174/176/184 |
| United Kingdom of Great Britain and Northern Ireland – Anguilla | 85 |

| List of the cases in which the Committee has requested **full reply to its comments outside of the reporting cycle** | |
|---|---|
| **State** | **Conventions Nos** |
| United Kingdom of Great Britain and Northern Ireland – Montserrat | 85 |
| United Kingdom of Great Britain and Northern Ireland – British Virgin Islands | 85 |
| United Kingdom of Great Britain and Northern Ireland – St Helena | 85/150 |
| United Rep of Tanzania – Zanzibar | 85 |
| Bolivarian Republic of Venezuela | 1, 13/45/120/127/139/155, 26/95, 87, 144 |
| Zimbabwe | 26/99, 87 |

## Cases of progress

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

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

(1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.

(2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measures adopted by the government concerned.**

(3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.

(4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.

(5) If the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up measures for its practical application.

(6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

**132.** Since first identifying cases of satisfaction in its report in 1964, [46] the Committee has continued to follow the same general criteria. The Committee expresses ***satisfaction*** in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

– to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and

– to provide an example to other governments and social partners which have to address similar issues.

**133.** Details concerning these cases of progress are found in Part II of this report and cover 24 instances in which measures of this kind have been taken in 22 countries. The full list is as follows:

[46] Report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference, para. 16.

| 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** |
| Bangladesh | 87 |
| Botswana | 87 |
| Bulgaria | 87 |
| Cambodia | 87 |
| Canada | 87 |
| Colombia | 98 |
| Costa Rica | 98 |
| France – French Polynesia | 111 |
| Jordan | 100 |
| Kazakhstan | 87 |
| Malaysia – Sabah | 97 |
| Pakistan | 138 |
| Qatar | 29 |
| Republic of Moldova | 111 |
| Samoa | 138 |
| Saudi Arabia | 138 |
| Serbia | 105 |
| Seychelles | 105 |
| Tajikistan | 182 |
| Turkey | 29, 111 |
| United Arab Emirates | 29, 138 |
| Viet Nam | 29 |

**134.** Thus the total number of cases in which the Committee has been led to **express its satisfaction** at the progress achieved following its comments has risen to **3,133** since the Committee began listing them in its report.

**135.** Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979. [47] In general, cases of ***interest*** cover **measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;

[47] Report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference, para. 122.

– judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
– the Committee may also note as cases of interest the progress made by a state, province or territory in the framework of a federal system.

**136.** Details concerning the cases in question are found either in Part II of this report or in the requests addressed directly to the governments concerned, and include **163** instances in which measures of this kind have been adopted in **79** countries. The full list is as follows:

List of the cases in which the Committee has been able to **note with interest** certain measures taken by the governments of the following countries

| **State** | **Conventions Nos** |
|---|---|
| Albania | 98, 151 |
| Argentina | 177 |
| Armenia | 87 |
| Australia | 87 |
| Bangladesh | 81, 87, 98 |
| Belarus | 98 |
| Bosnia and Herzegovina | 98, 135, 154 |
| Burundi | 111 |
| Cambodia | 87 |
| Canada | 108 |
| China | 155/167 |
| China – Hong Kong Special Administrative Region | 98 |
| Colombia | 87, 98, 144 |
| Costa Rica | 87 |
| Czechia | 154 |
| Denmark – Faroe Islands | MLC, 2006 |
| El Salvador | 87 |
| Finland | MLC, 2006 |
| France | 87, 98 |
| France – French Polynesia | 81/129, 125 |
| Gabon | 111, 122 |
| Georgia | 100, 111 |
| Greece | 100, 122, 149, 156 |
| Guinea | 117 |
| Guinea-Bissau | 18, 111 |
| Honduras | 87, 122 |
| Hungary | 100, 111 |
| Iceland | 111 |
| India | 81 |

List of the cases in which the Committee has been able to **note with interest** certain measures taken by the governments of the following countries

| State | Conventions Nos |
|---|---|
| Ireland | 100, 122 |
| Italy | 111 |
| Japan | 156, MLC, 2006 |
| Jordan | 111 |
| Kazakhstan | 87 |
| Kenya | 17, 97/143 |
| Kiribati | 182 |
| Kyrgyzstan | 105 |
| Lao People's Democratic Republic | 100 |
| Liberia | MLC, 2006 |
| Lithuania | 88 |
| Malawi | 81/129/150, 149 |
| Mali | 122, 159 |
| Malta | MLC, 2006 |
| Mauritius | 88, 94, 100 |
| Mexico | 111, 142, 159 |
| Montenegro | 111, 158 |
| Morocco | 111, 181 |
| Netherlands | 142 |
| New Zealand | 82, 111 |
| Nicaragua | 142 |
| North Macedonia | 122, 158 |
| Norway | 94, 111 |
| Pakistan | 29, 81, 138, 182 |
| Panama | 105, 138 |
| Peru | 29, 182 |
| Philippines | 151 |
| Poland | 81 |
| Qatar | 29, 81 |
| Republic of Korea | 156 |
| Republic of Moldova | 111 |
| Samoa | 182 |
| Senegal | 81 |
| Serbia | 81/129, 182 |
| Singapore | 94 |

List of the cases in which the Committee has been able to **note with interest** certain measures taken by the governments of the following countries

| State | Conventions Nos |
|---|---|
| Somalia | 87, 98 |
| South Africa | MLC, 2006 |
| South Sudan | 100 |
| Sri Lanka | 122, 138 |
| Suriname | 111 |
| Sweden | 81/129 |
| Tajikistan | 122, 142 |
| Trinidad and Tobago | 81/150, 182 |
| Turkey | 115/119/127/155/161/167/176/187 |
| Ukraine | 81/129/150 |
| United Arab Emirates | 81 |
| United Kingdom of Great Britain and Northern Ireland | 115/120/148/187 |
| United Kingdom of Great Britain and Northern Ireland – Anguilla | 85 |
| United Kingdom of Great Britain and Northern Ireland – Gibraltar | 160 |
| United Kingdom of Great Britain and Northern Ireland – Isle of Man | 160 |
| United Kingdom of Great Britain and Northern Ireland – Jersey | 160 |
| United Republic of Tanzania | 142, 148/170 |
| Uruguay | 29, 115/136/139/155/161/162/167/176/184 |
| Uzbekistan | 29 |
| Bolivarian Republic of Venezuela | 13/45/120/127/139/155 |
| Zimbabwe | 98 |

## Practical application

**137.** As part of its assessment of the application of Conventions in practice, the Committee notes the information contained in governments' reports, such as information relating to judicial decisions, statistics and labour inspection. The supply of this information is requested in almost all report forms, as well as under the specific terms of some Conventions. The Committee found information of this nature to be particularly useful this year in illustrating the impact of the COVID-19 pandemic on the world of work and the corresponding measures taken by governments as a response.

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

**139.** In the context of the COVID-19 pandemic such information is indispensable to complete the examination of national legislation and to help the Committee identify the issues arising from real problems of application in practice. The Committee wishes to emphasize to governments the importance of submitting such information and also encourage employers' and workers' organizations to submit clear and up-to-date information on the application of Conventions in practice.

## Observations made by employers' and workers' organizations

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

### In a reporting year

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

### Outside of a reporting year

**142.** At its 88th Session (2017), following its consideration of the Governing Body's review of the reporting cycle for technical Conventions from five to six years, the Committee indicated its willingness to consider the manner in which it might broaden the very strict criteria for breaking its cycle of review when receiving comments from workers' or employers' organizations on a specific country under article 23, paragraph 2, of the ILO Constitution and decided that inspiration in this regard could be drawn from those criteria used for "footnoting" cases and set out in paragraph 73 of that year's General Report.

**143.** In light of the November 2018 Governing Body decision (GB.334/INS/5) expanding the reporting cycle for technical Conventions from five to six years and expressing its understanding that the Committee would further review, clarify and, where appropriate, broaden the criteria for breaking the reporting cycle with respect to technical Conventions, the Committee proceeded with the review of the criteria mentioned above at its 89th Session (2018).

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

**145.** Where the observations on a technical Convention meet the criteria set out in paragraph below, the Committee will request the office to issue a notification to governments that the article 23 observations received will be examined at its subsequent session with or without a response from the government. This would ensure that governments have sufficient notice while ensuring that the examination of matters of importance are not further delayed.

**146.** The Committee would thus review the application of a **technical Convention** outside of a reporting year following observations submitted by employers' and workers' organizations having due regard to the following elements:

– the seriousness of the problem and its adverse impact on the application of the Convention;

– the persistence of the problem; and

– the relevance and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

**147.** With respect to **any Convention (fundamental, governance or technical)**, recalling its well-established practice, the Committee will examine employers' and workers' observations in a non-reporting year in the year received in the exceptional cases set out in paragraph above, even in the absence of a reply from the government concerned.

**148.** The Committee emphasized that the procedure set out in the paragraphs above aims at giving effect to decisions taken by the Governing Body which have extended the reporting cycle and called for safeguards in that context, to ensure that effective supervision of the application of ratified Conventions is maintained. One of these safeguards consists in giving due recognition to the possibility afforded to employers' and workers' organizations to draw the attention of the Committee to matters of particular concern arising from the application of ratified Conventions, even in a year when no report is due. The approach above also pays particular attention to the importance of providing due notice to governments, except in exceptional circumstances, and in all cases the Committee will indicate its reasons for breaking the cycle.

**149.** The Committee notes that since its last session, it has received **757** observations (compared to 915 last year), 230 of which (compared to 297 last year) were communicated by employers' organizations and 527 (compared to 618 last year) by workers' organizations. The great majority of the observations received (**695** compared to 721 last year) related to the application of ratified Conventions; [48] **243** of these observations (compared to 349 last year) concerned the application of fundamental Conventions, **75** (compared to 148 last year) related to governance Conventions and **377** (compared to 252 last year) concerned the application of other Conventions. Moreover, **62** observations were received in addition to the 194 received last year in relation to the 2020 General Survey on Promoting Employment and Decent Work in a Changing Landscape. The Committee notes that, 589 of the observations received this year on the application of ratified Conventions were transmitted directly to the Office. In 106 cases, the governments transmitted the observations made by employers' and workers' organizations with their reports. The Committee notes that in general the employers' and workers' organizations concerned endeavoured to gather and present information on the application of ratified Conventions in specific countries, both in law and in practice. The Committee recalls that observations of a general nature relating to certain Conventions are more appropriately addressed within the framework of the Committee's consideration of General Surveys or within other forums of the ILO.

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

**150.** The combination of the work of the supervisory bodies and the practical guidance given to Member States through development cooperation and technical assistance has always been one of the key dimensions of the ILO supervisory system.

**151.** The Committee notes that the Office reacted swiftly to the COVID-19 pandemic by providing much needed technical assistance for labour law reforms aimed at addressing the immediate impact of the pandemic and by supporting social dialogue processes in this framework. The Office reallocated resources to addressing the COVID-19 pandemic with special emphasis placed on international labour standards and social dialogue. Moreover, comprehensive partnerships have been established with major donors in support of Member States facing serious reporting and application gaps in Africa, Asia and Latin America. These projects draw upon the guidance of the ILO supervisory bodies in order to strengthen national capacities to engage in trade relationships based on respect for fundamental principles and rights at work, which are now more important than ever for sustainable recovery.

**152.** The Committee welcomes information according to which the ILO International Training Centre in Turin has swiftly reacted to the pandemic by converting its capacity-building programs and notably the International Labour Standards Academy into online courses to be delivered virtually. It also welcomes the new regional focus of the Academy which this year brought together close to 160 participants from Africa representing the ILO constituents, judges, law professors and other legal professionals and the media from across the continent. The Committee notes the ILS Academy's important contribution to building the reporting capacities of governments, employers' and workers' organizations including in countries facing serious weaknesses in this field.

**153.** In addition to cases of serious failure by Member States to fulfil certain specific obligations related to reporting, the cases for which, in the Committee's view, technical assistance from the Office would be particularly useful in helping Member States to address gaps in law and in practice in the

[48] Appendix III to this Report.

implementation of ratified Conventions, particularly in the context of the COVID-19 pandemic, are highlighted in the following table and details can be found in Part II of this report.

List of the cases in which **technical assistance** would be particularly useful in helping Member States

| State | Conventions Nos |
|---|---|
| Algeria | 87, 98 |
| Angola | 87, 98 |
| Armenia | 98 |
| Bahamas | 87 |
| Bangladesh | 87, 98 |
| Belarus | 87, 98 |
| Botswana | 87, 98 |
| Brazil | 151 |
| Bulgaria | 87 |
| Burundi | 87 |
| Cambodia | 87, 98 |
| Chad | 81, 122 |
| Colombia | 87, 98 |
| Comoros | 87, 111 |
| Congo | 185, MLC, 2006 |
| Costa Rica | 87 |
| Czechia | 98 |
| Democratic Republic of Congo | 62/119/120, 94 |
| Dominican Republic | 87, 98 |
| Egypt | 87 |
| El Salvador | 87 |
| Eritrea | 105, 138 |
| Ethiopia | 138 |
| Gabon | MLC, 2006 |
| Ghana | 107 |
| Guatemala | 87, 98 |
| Guinea-Bissau | 12/18/19, 81, 100 |
| Honduras | 87 |
| Hungary | 185 |
| Islamic Republic of Iran | 122 |
| Iraq | 187 |
| Israel | 100 |
| Jamaica | 94 |
| Jordan | 185, MLC, 2006 |

List of the cases in which **technical assistance** would be particularly useful in helping Member States

| State | Conventions Nos |
|---|---|
| Kiribati | 185 |
| Kuwait | 111 |
| Kyrgyzstan | 17, 81, 87, 95, 97 |
| Libya | 122 |
| Malawi | 81/129/150 |
| Maldives | 185, MLC, 2006 |
| Montenegro | 185 |
| Myanmar | 185 |
| North Macedonia | 94 |
| Paraguay | 81 |
| Peru | 81 |
| Philippines | 87 |
| Republic of Moldova | 100, 185 |
| Romania | MLC, 2006 |
| Saint Vincent and the Grenadines | 111 |
| Senegal | 87 |
| Serbia | 81/129, 94 |
| Seychelles | 81 |
| Sierra Leone | 88 |
| South Africa | MLC, 2006 |
| South Sudan | 100, 111 |
| Sri Lanka | 98, 185 |
| Suriname | 100 |
| Timor-Leste | 87 |
| Tunisia | 45/62/120 |
| Turkey | 98 |
| Turkmenistan | 105 |
| Ukraine | 81/129 |
| United Arab Emirates | 1 |
| United Kingdom of Great Britain and Northern Ireland – Anguilla | 85 |
| United Kingdom of Great Britain and Northern Ireland – British Virgin Islands | 85 |
| United Kingdom of Great Britain and Northern Ireland – Gibraltar | 160 |
| United Kingdom of Great Britain and Northern Ireland – Guernsey | 63 |

List of the cases in which **technical assistance** would be particularly useful in helping Member States

| State | Conventions Nos |
|---|---|
| United Kingdom of Great Britain and Northern Ireland – Jersey | 17 |
| United Kingdom of Great Britain and Northern Ireland – Montserrat | 85 |
| United Kingdom of Great Britain and Northern Ireland – St Helena | 63, 85 |
| United Republic of Tanzania – Zanzibar | 85 |
| Uruguay | 63, 98 |
| Bolivarian Republic of Venezuela | 13/45/120/127/139/155, 87, 144 |
| Viet Nam | 81 |

## C. Reports under article 19 of the Constitution

**154.** The Committee recalls that the Governing Body decided that the subjects of General Surveys should be aligned with those of the annual recurrent discussions in the Conference under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008. This year, governments were requested to supply additional information to the reports submitted last year under article 19 of the Constitution as a basis for the General Survey on the Employment Policy Convention, 1964 (No. 122), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Home Work Convention, 1996 (No. 177), the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), the Home Work Recommendation, 1996 (No. 184), the Employment Relationship Recommendation, 2006 (No. 198), and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). [49] An Addendum to last year's general survey has been prepared on the basis of a preliminary examination by a working party comprising seven members of the Committee in accordance with the practice followed in previous years.

**155.** The Committee notes with ***regret*** that, for the past five years, none of the reports on unratified Conventions and on Recommendations requested under article 19 of the Constitution have been received from the following **21** countries: **Belize, Chad, Congo, Dominica, Grenada, Guyana, Haiti, Liberia, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Timor-Leste, Tonga, Tuvalu** and **Yemen**.

**156.** ***The Committee once again urges governments to provide the reports requested so that its General Surveys can be as comprehensive as possible and provide a complete picture of developments relevant to the impact of COVID-19 in areas that are particularly affected by the pandemic.***

## D. Collaboration with the United Nations

**157.** The Committee welcomes the Statement by the President of the UN Human Rights Council, calling upon States to ensure that all human rights are respected, protected and fulfilled while combatting the pandemic and that their responses to the COVID-19 pandemic are in full compliance with their human rights obligations and commitments. [50] It commends the many recommendations of the mandate holders of the UN Human Rights Council on a broad range of human rights issues, such as the right to health, the right to housing, poverty, freedom of expression, racism and discrimination, the right to water, the situation of older persons, domestic violence, the consequences of the state of exception, emergency measures or specific groups, communities and populations. [51]

[49] Report III(Part B), International Labour Conference, 109th Session, Geneva, 2020.

[50] UN General Assembly, Human Rights Council, Statement by the President, PRST 43/...Human rights implications of the COVID-19 pandemic, A/HRC/43/L.42 (2020).

[51] UN Office of the High Commissioner for Human Rights, COVID-19 and special procedures.

**158.** The Committee takes note of the statement on COVID-19 and economic, social and cultural rights released by the Committee on Economic, Social and Cultural Rights (CESCR) on 6 April 2020 providing comprehensive guidance on the measures that States parties to the Covenant should take to address the pandemic, including with regard to the need to mitigate its impact on the most vulnerable and marginalized groups. [52] The Committee welcomes the particular emphasis placed on occupational safety and health in this statement. It also recalls the CESCR statement that "the right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement". [53]

**159.** The Committee also takes note of General Comment No. 37 published on 29 July 2020 by the UN Human Rights Committee. The latter emphasizes the indivisibility of civil, political, social, economic and cultural rights by describing the fundamental human right of peaceful assembly as "a valuable tool that can and has been used to recognize and realize a wide range of other rights, including economic, social and cultural rights". [54] In the same vein, the Committee welcomes the statement made on 16 March 2020, by a group of UN human rights experts that "emergency declarations based on the COVID-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health … and should not be used simply to quash dissent". [55]

**160.** The Committee notes that the UN issued comprehensive guidance on the socio-economic response to the COVID-19 pandemic which features international labour standards among the international human rights norms and standards guiding the UN Development System, thereby acknowledging the central role that rights at work can play as part of the recovery and for building back better. [56]

**161.** The Committee emphasizes the indivisible nature of human rights and the importance of both civil and political as well as economic, social and cultural rights as guideposts for COVID-19 recovery. It also underlines the complementarity of the supervisory and monitoring body comments in this framework. It draws attention to SDG indicator 8.8.2 which is the only indicator in the 2030 Agenda to draw upon the comments of supervisory bodies of the ILO in assessing progress towards meeting the goal of national compliance with labour rights and especially freedom of association and collective bargaining. Cooperation across supervisory and monitoring bodies in the UN system is now more necessary than ever in order to prevent regression in the realization of the 2030 Agenda and the advancement of human rights including labour standards, making the latter an integral part of COVID-19 response packages.

**162.** The Committee reiterates its hope that international labour standards and the comments of the supervisory bodies will be increasingly integrated in United Nations Sustainable Development Cooperation Frameworks (UNSDCFs) and Decent Work Country Programmes (DWCPs) to help Member States ensure respect for labour rights as an integral part of human rights in the context of immediate and long-term responses to the COVID-19 pandemic.

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

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

[52] UN Committee on Economic, Social and Cultural Rights, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1 (2000).

[53] UN Committee on Economic, Social and Cultural Rights, General comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), Twenty-second session, E/C.12/2000/4 (2000).

[54] UN International Covenant on Civil and Political Rights, Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37 (2020), para. 2.

[55] UN Office of the High Commissioner for Human Rights, COVID-19: States should not abuse emergency measures to suppress human rights – UN experts.

[56] UN Office of the High Commissioner for Human Rights, COVID-19 Guidance.

(a) information on measures taken to submit to the competent authorities the instruments adopted by the Conference from June 1970 (54th Session) to June 2019 (108th Session) (Conventions Nos 131 to 190, Recommendations Nos 135 to 206 and Protocols); and

(b) replies to the observations and direct requests made by the Committee at its 90th Session (November–December 2019).

**164.** Appendix IV of Part II of the report contains a summary of the most recent information received indicating the competent national authorities to which the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, as well as the Violence and Harassment Convention (No. 190), and the Violence and Harassment Recommendation, 2019 (No. 206), adopted at the 108th Session of the Conference, were submitted and the date of submission. In addition, Appendix IV summarizes the information supplied by governments with respect to the instruments adopted in earlier years and submitted to the competent authorities in 2020.

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

## 103rd Session

**166.** At its 103rd Session in June 2014, the Conference adopted the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). The Committee notes with ***interest*** that the Protocol of 2014 to the Forced Labour Convention, 1930, which entered into force on 9 November 2016, has been ratified by **46** Member States: **Argentina, Austria, Belgium, Bosnia and Herzegovina, Canada, Cyprus, Czechia, Côte d'Ivoire, Denmark, Djibouti, Estonia, Finland, France, Germany, Iceland, Ireland, Israel, Jamaica, Kyrgyzstan, Latvia, Lesotho, Lithuania, Madagascar, Malawi, Mali, Malta, Mauritania, Mozambique, Namibia, Netherlands, New Zealand, Niger, Norway, Panama, Poland, Russian Federation, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, United Kingdom, Uzbekistan and Zimbabwe**. ***The Committee encourages all governments to continue their efforts to submit the instruments adopted by the Conference at its 103rd Session to their legislatures and to report on any action taken with regard to these instruments.***

## 104th Session

**167.** At its 104th Session in June 2015, the Conference adopted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The 12-month period for submission of Recommendation No. 204 to the competent authorities ended on 12 June 2016, and the 18-month period (in exceptional circumstances) on 12 December 2016. The Committee notes that 96 governments have provided information on the submission to the competent authorities of Recommendation No. 204. It refers in this regard to Appendix IV of Part II of the report, which contains a summary of information supplied by governments on submission, including with respect to Recommendation No. 204. ***The Committee encourages all governments to continue their efforts to submit Recommendation No. 204 to their legislatures and to report on any action taken with regard to this instrument.***

## 105th and 106th Sessions

**168.** The Committee recalls that no instrument was adopted at the 105th Session of the Conference (May–June 2016). At its 106th Session in June 2017, the Conference adopted the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). The 12-month period for submission of Recommendation No. 205 to the competent authorities ended on 16 June 2018, and the 18-month period (in exceptional circumstances) ended on 16 December 2018. The Committee notes that 73 governments have provided information on the submission of Recommendation No. 205 to the competent national authorities. ***The Committee welcomes the information provided to date and encourages all governments to submit Recommendation No. 205 to their legislatures and to report on any action taken with regard to this instrument.***

## 107th and 108th Sessions

**169.** The Committee recalls that no instrument was adopted at the 107th Session of the Conference (May–June 2018). At its 108th Session in June 2019, the Conference adopted the Violence and Harassment

Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, 2019 (No. 206). The 12-month period for submission of Recommendation No. 205 to the competent authorities ended on 21 June 2020, and the 18-month period (in exceptional circumstances) will end on 21 December 2020. The Committee notes that **31** governments, **Azerbaijan, Barbados, Belgium, Cameroon, Canada, Denmark, Estonia, Fiji, Finland, Guatemala, Iceland, Indonesia, the Islamic Republic of Iran, Israel, Japan, Kiribati, Latvia, Luxembourg, Morocco, Myanmar, Niger, Poland, Senegal, Slovakia, Slovenia, Togo, Trinidad and Tobago, Turkey, the United States of America, Uruguay and Uzbekistan**, have provided information on the submission of Convention No. 190 and Recommendation No. 206 to the competent national authorities. ***The Committee welcomes the information provided to date and encourages all governments to submit Convention No. 190 and Recommendation No. 206 to their legislatures and to report on any action taken with regard to this instrument.***

## Cases of progress

**170.** The Committee notes with ***interest*** the information provided by the Government of: **Kiribati.** It welcomes the efforts made by **Kiribati** in overcoming significant delays in submission and taking important steps toward fulfilling its constitutional obligation to submit to its legislature the instruments adopted by the Conference over a number of years.

## Special problems

**171.** To facilitate the work of the Conference Committee on the Application of Standards, this report only mentions those governments that have not submitted the instruments adopted by the Conference to their competent authorities for at least seven sessions. These special problems are referred to as cases of "serious failure to submit". **This timeframe begins at the 99th Session (2010) and concludes at the 108th Session (2019), bearing in mind that the Conference did not adopt any Conventions or Recommendations during its 97th (2008), 98th (2009), 102nd (2013) and 107th (2018) Sessions.** Thus, this timeframe was deemed long enough to warrant inviting the governments concerned to a special sitting of the Conference Committee so that they could account for delays in submission. In addition, the Committee is also providing information in its observations concerning cases of "failure to submit", in relation to governments that have not submitted to the competent authorities the instruments adopted at the last six sessions of the Conference.

**172.** The Committee notes that, at the closure of its 91st Session on 12 December 2019, the following **48** (38 in 2016, 31 in 2017, 39 in 2018 and 36 in 2019) Member States were in the category of "serious failure to submit": **Albania, Bahamas, Bahrain, Belize, the Plurinational State of Bolivia, Brunei Darussalam, Chile, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Eswatini, Fiji, Gabon, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Hungary, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Malta, Marshall Islands, Pakistan, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen** and **Zambia**.

**173.** The Committee is aware of the exceptional circumstances that have affected some of these countries for years, as a result of which some of them have been deprived of the institutions needed to fulfil their obligation to submit instruments. At the 108th Session of the Conference (June 2019), some Government delegations supplied information explaining why their countries had been unable to meet the constitutional obligation to submit Conventions, Recommendations and Protocols to their national legislatures. Following the concerns raised by the Committee of Experts, the Conference Committee also expressed great concern at the failure to respect this obligation. It pointed out that compliance with this constitutional obligation, which means submitting the instruments adopted by the Conference to national legislatures, is of the utmost importance in ensuring the effectiveness of the Organization's standards-related activities.

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

## Comments of the Committee and replies from governments

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

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

* * *

**177.** Lastly, recalling all the challenges posed by operating in a time when a pandemic is raging, the Committee would like to express its profound appreciation for the invaluable assistance rendered to it by the officials of the Office, whose competence and devotion to duty make it possible for the Committee to accomplish its complex task in a limited period of time.

Geneva, 12 December 2020

*(Signed)* Graciela Josefina Dixon Caton
Chairperson

Rosemary Owens
Reporter

# Appendix to the General Report

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

### Mr Shinichi AGO (Japan)

Professor and Director, Kyoto Museum for World Peace, Ritsumeikan University, former Law Dean and Vice-President of Kyushu University; member of the Asian Society of International Law, the International Law Association and the International Society for Labour and Social Security Law; President of the Asian Development Bank Administrative Tribunal.

### Ms Lia ATHANASSIOU (Greece)

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

### Ms Leila AZOURI (Lebanon)

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

### Mr Lelio BENTES CORRÊA (Brazil)

Judge at the Labour Superior Court (Tribunal Superior do Trabalho) of Brazil, former Labour Public Prosecutor of Brazil, LL.M of the University of Essex, United Kingdom; former member

of the National Council of Justice of Brazil; Professor at the Instituto de Ensino Superior de Brasilia.

### Mr James J. BRUDNEY (United States of America)

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

### Ms Graciela Josefina DIXON CATON (Panama)

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

### Mr Rachid FILALI MEKNASSI (Morocco)

Doctor of Law; former Professor at the University Mohammed V of Rabat; member of the Higher Council of Education, Training and Scientific Research; consultant with national and international public bodies, Professor Filali Meknassi was the founder and director of several national NGOs and responsible for numerous development cooperation projects, including the ILO project "Sustainable Development through the Global Compact" (2005–08). Since 2000, he has collaborated in the training activities of the International Training Centre of the ILO in Turin. He is a member of several scientific committees and institutes and the author of about 100 publications in French and Arabic, some of which have been translated into Spanish and English.

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

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

### Mr Alain LACABARATS (France)

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

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

Professor of Law, Department of Labour Law, Faculty of Law, Moscow State Lomonosov University; Secretary, Russian Association for Labour and Social Security Law; 2011–16

member of the European Committee of Social Rights; member of the President's Committee of the Russian Federation on the Rights of Persons with Disabilities (non-paid basis).

## **Ms Karon MONAGHAN** (United Kingdom of Great Britain and Northern Ireland)

Queen's Counsel; former Deputy High Court Judge (2010–19); former Judge of the Employment Tribunal (2000–08); practising lawyer with Matrix Chambers, specializing in discrimination and equality law, human rights law, European Union law, public law and employment law; Honorary Visiting Professor, Faculties of Laws, University College London.

## **Mr Vitit MUNTARBHORN** (Thailand)

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

## **Mr Sandile NGCOBO** (South Africa)

Former Chief Justice of the Republic of South Africa; former Judge and acting Judge President of the Labour Appeal Court of South Africa; former Judge of the Supreme Court, Cape of Good Hope Provincial Division; acting Judge of the Supreme Court of Namibia; presiding officer of the Electoral Tribunal of the Independent Election Commission during the first democratic election in South Africa in 1994; visiting Professor of Law at the Harvard Law School, the University of New York Law School, and former visiting Professor of Law at the Columbia University School of Law and the Cornell Law School; former Chairperson of the South African Presidential Remuneration Review Commission of Inquiry; former attorney in law firms in South Africa and the United States.

## **Ms Rosemary OWENS** (Australia)

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

## **Ms Mónica PINTO** (Argentina)

Professor Emerita, Universidad de Buenos Aires. Member of the Institut de droit international. Counsel in international law cases and arbitrator/member of ad hoc Committees in foreign investment cases. She has appeared before universal and regional human rights instances, arbitral tribunals and the International Court of Justice as counsel and as expert. Former Dean

of the Law School, UBA (2010-18). Visiting Professor at University of Columbia, Paris I & II, Rouen. She taught at The Hague Academy of International Law, at the Inter-American and European Institutes on Human Rights. She held several mandates for the UN in the area of human rights. Judge and President of the Administrative Tribunals of the World Bank and of the IADB. Vice-President of the Advisory Committee for Nominations for the ICC (2013-18), member of the Independent Expert Review (2020). She published five books and several articles in periodical publications in USA and Europe.

## Mr Paul-Gérard POUGOUÉ (Cameroon)

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

## Mr Raymond RANJEVA (Madagascar)

President of the Madagascar Academy (National Academy of Arts, Letters and Sciences of Madagascar); former member (1991–2009), Vice-President (2003–06) and senior judge (2006–09) of the International Court of Justice (ICJ), and President (2005) of the Chamber formed by the ICJ to deal with the Benin/Niger frontier dispute; Bachelor's degree in Law (1965), University of Madagascar, Antananarivo; Doctorate of Law, University of Paris II; *Agrégé* of the Faculties of Law and Economics, Public Law and Political Science section, Paris (1972); Doctor honoris causa of the Universities of Limoges, Strasbourg and Bordeaux-Montesquieu; former Professor at the University of Madagascar (1981–91) and several other national and foreign institutions; former First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegation to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties (1976–77); former first Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the Court of Arbitration of the International Chamber of Commerce; member of the Court of Arbitration for Sport; member and former Vice-President of the Institute of International Law; member of numerous national and international professional and academic societies; Curatorium of the Hague Academy of International Law; member of the Pontifical Council for Justice and Peace; President of the African Society of International Law since 2012; former Vice- Chairman of the International Law Institute (2015–17); Chairperson of the ILO Commission of Inquiry on Zimbabwe; associate of the Académie de Sciences d'Outre-mer (Paris).

## Ms Kamala SANKARAN (India)

Professor, Faculty of Law, University of Delhi and former Vice-Chancellor, Tamil Nadu National Law University, Tiruchirappalli (2016–19); Former Dean, Legal Affairs, University of Delhi; member, Task Force to Review Labour Laws, National Commission for Enterprises in the Unorganised and Informal Sector, Government of India; member, International Advisory Board, International Journal of Comparative Labour Law and Industrial Relations; member, Editorial Board, University of Oxford Human Rights Hub Journal; Fellow, Stellenbosch Institute

of Advanced Study, South Africa; Visiting South Asian Research Fellow, School of Interdisciplinary Area Studies, Oxford University; Fulbright Post-Doctoral Research Scholar, Georgetown University Law Center, Washington, DC.

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

President of the Industrial Court of Trinidad and Tobago; Judge of the International Monetary Fund Administrative Tribunal ; former President the United Nations Appeals Tribunal ;former Second Vice-President of the United Nations Appeals Tribunal; former Chair of the Trinidad and Tobago Securities and Exchange Commission; former Chair of the Caribbean Group of Securities Regulators; former Deputy Chief Magistrate of the Judiciary of Trinidad and Tobago; former President of the Family Court of Saint Vincent and the Grenadines; Hubert Humphrey Fulbright Fellow; Georgetown University Leadership Seminar Fellow; and Commonwealth Institute of Judicial Education Fellow.

## **Mr Bernd WAAS** (Germany)

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

# Part II. Observations concerning particular countries

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

## Observations on serious failure to report

### Belize

The Committee notes with ***concern***, that for the second year, the reports due on ratified Conventions have not been received. Twenty-two reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments. The Committee hopes that the government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

### Congo

The Committee notes with ***deep concern*** that the first report on the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), as amended, due since 2015, the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2016, and the report on the Work in Fishing Convention, 2007 (No. 188), due since 2018, have not been received. The Committee notes that, for the third year, the reports due on ratified Conventions have not been received. Fifteen reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments. The Committee launched last year an urgent appeal to the Government to send its first reports concerning Convention No. 185 and the MLC, 2006. The Committee decided to examine the application of these Conventions at this Session on the basis of available information.

Recalling that technical assistance was provided last year on these issues by the ILO Decent Work Team for Central Africa, the Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

### Djibouti

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Twenty-two reports are now due for this country on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

## Dominica

The Committee notes with ***deep concern*** that, for the eighth year, the reports due on ratified Conventions have not been received. Twenty-four reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

## Equatorial Guinea

The Committee notes with ***deep concern*** that, for the last 14 years, the reports due on ratified Conventions have not been received. Fourteen reports are now due on fundamental and technical Conventions, most of which should have included information in reply to the Committee's comments.

Of these 14 reports, two are first reports on the application of the Food and Catering (Ships' Crews) Convention, 1946 (No. 68), and the Accommodation of Crews Convention (Revised), 1949 (No. 92), due since 1998. Noting that the Government has requested technical assistance for reporting on these two Conventions, the Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

## Gabon

The Committee notes with ***deep concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2016, has not been received. The Committee launched last year an urgent appeal to the Government to send its first report concerning the MLC, 2006. Even in the absence of this first report, the Committee decided to examine the application of this Convention at this session on the basis of available information.

The Committee firmly hopes that the Government will soon submit this first report in accordance with its constitutional obligation and that it will respond to the Committee's comments. Recalling that technical assistance was provided on these issues by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

## Grenada

The Committee notes with ***deep concern*** that, for the fourth year, the reports due on ratified Conventions have not been received. Thirteen reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

## Guyana

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

## Jamaica

The Committee notes with ***deep concern*** that the first report on the Domestic Workers Convention, 2011 (No. 189), due since 2018, has not been received. The Committee firmly hopes that the Government will soon submit this report in accordance with its constitutional obligation. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

## Lebanon

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

## Madagascar

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

## Maldives

The Committee notes with ***deep concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2016, has not been received. The Committee launched last year an urgent appeal to the Government to send its first report concerning the MLC, 2006. Even in the absence of this first report, the Committee decided to examine the application of this Convention at this session on the basis of available information.

The Committee firmly hopes that the Government will soon submit this report in accordance with its constitutional obligation. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

## Netherlands

### Aruba

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

### Sint Maarten

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Three reports are now due on governance and technical Conventions which should have included information in reply to the Committee's comments. The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

## Nigeria

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Six reports are now due on fundamental and technical Conventions most of which should have included information in reply to the Committee's comments. Recalling that technical assistance will be provided on these issues by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

## Romania

The Committee notes with ***deep concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2017, has not been received. The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

## Saint Kitts and Nevis

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Five reports are now due on fundamental and technical Conventions which should have included information in reply to the Committee's comments. The Committee hopes that Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

## Saint Lucia

The Committee notes with ***deep concern*** that, for the last seven years, the reports due on ratified Conventions have not been received. Eighteen reports are now due on fundamental and technical

Conventions, most of which should have included information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

## Sao Tome and Principe

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Eight reports are now due on fundamental, governance and technical Conventions, including the first report on the application of the Maternity Protection Convention, 2000 (No. 183), due since 2019. In addition, most of these reports should have included information in reply to the Committee's comments. The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

## Sri Lanka

The Committee notes with ***concern*** that the first report on the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2019 has not been received. The Committee hopes that Government will soon submit this first report in accordance with its constitutional obligation.

## Tunisia

The Committee notes with ***concern*** that the first report on the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2019 has not been received. The Committee hopes that Government will soon submit this first report in accordance with its constitutional obligation.

## United Republic of Tanzania

The Committee notes with ***concern*** that the first report on the application of the Seafarers' Identity Documents Convention (Revised), 2003 as amended (No. 185), due since 2019 has not been received. The Committee hopes that Government will soon submit this first report in accordance with its constitutional obligation.

### Tanganyika

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

## Vanuatu

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: *Afghanistan, Antigua and Barbuda, Bangladesh, Barbados, Belarus, Benin, Plurinational State of Bolivia, Chad, Côte d'Ivoire, Guinea, Guinea-Bissau, Haiti, India, Iraq, Kiribati, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Liberia, Malawi, Montenegro, Mozambique, Papua New Guinea, Russian Federation, Rwanda, Saint Vincent and the Grenadines, San Marino, Sierra Leone, Somalia, South Sudan, Syrian Arab Republic, Tuvalu, Uganda, Ukraine, Yemen, Zambia.*

# Freedom of association, collective bargaining, and industrial relations

## Albania

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 16 September 2020, denouncing the persistence of restrictions on the right of workers to establish trade unions through acts of retaliation, intimidation or even police abuse. ***Recalling that the 2019 ITUC observations had raised similar allegations, the Committee requests the Government to provide its comments on the 2019 and 2020 ITUC's observations.***

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, which allege violations of trade union rights in practice. ***The Committee requests the Government to provide its comments in this respect.***

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

*Article 2 of the Convention. Right to organize of foreign workers.* With reference to section 70 of the Act on Foreigners (No. 108 of 2013), providing that foreign workers with a permanent residence permit shall enjoy economic and social rights on the same terms as nationals, the Committee had requested the Government to take all necessary measures to ensure that all foreign workers, whether with a permanent or temporary residence permit or without residence permit, can exercise trade union rights. The Committee notes the Government's position that articles 16(1), 46(1) and 50 of the Constitution of the Republic of Albania fully guarantee the rights of foreigners in this regard and that the Act on Foreigners provides foreigners with protection against any form of discrimination. ***The Committee requests the Government to confirm that all foreign workers, including those without a residence permit, may exercise trade union rights, and particularly the right to join organizations which defend their interests as workers. The Committee further requests the Government to provide information on foreign workers' exercise of this right in practice, and otherwise to take any necessary measures to ensure they can exercise these rights under the Convention.***

*Article 3. Right of organizations to organize their activities and formulate their programmes.* For a number of years, the Committee has been requesting the Government to take measures to: (i) amend section 197/7(4) of the Labour Code concerning sympathy strikes; and (ii) ensure that all public servants who do not exercise authority in the name of the State are able to exercise the right to strike.

The Committee notes with ***satisfaction*** that the Government informs that Act No. 136 of 5 December 2016 on some supplements and amendments to the Labour Code, amends article 197/7 to provide that sympathy strikes shall be lawful provided that it supports a legal strike.

The Committee further notes that the Government informs that Act No. 152/2013 on the civil servants provides for the right to join unions and professional associations and for the right to strike to civil servants except as otherwise provided by law. The Government indicates that in any case the right to strike is not permitted in relation to essential services of state activity. The Committee recalls in this regard that prohibitions to the right to strike, which curtail the right of unions to organize their activities to defend the interest of workers, may only be imposed in relation to public servants exercising authority in the name of the State, essential services in the strict sense of the term (the interruption of which would endanger the life, personal safety or health of the whole or part of the population) or in situations of acute national or local crisis (for a limited period of time and to the extent necessary to meet the requirements of the situation). The Committee observes that the list of essential services provided in article 35 of the Act on the civil servants includes services such as transport or public television, which may not be considered essential services in the strict sense of the term. ***The Committee requests the Government to indicate any further exceptions to the right to strike set out in the laws and to take any necessary measures to ensure that the legislation is amended in accordance with the above-mentioned principles.***

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

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 16 September 2020, denouncing anti-union discrimination acts in the mining sector, in particular the anti-union dismissal of the chairman of the Trade Union of United Mineworks of Bulquiza (TUUMB) following the establishment of the union. The Committee further notes that the ITUC alleges the lack of adequate protection against anti-union discrimination. ***Recalling that in its 2019 observations the ITUC had raised similar allegations, as well as severe obstacles to collective bargaining, the Committee requests the Government to ensure that all allegations of anti-union discrimination are subject to swift and effective investigations by an independent body and to provide its comments on the 2019 and 2020 ITUC observations.***

The Committee notes with ***regret*** that the Government has not provided its report, due in 2019, and therefore urges the Government to send it before its next meeting. The Committee observes however that the Government's reports on the application of Labour Relation (Public Service) Convention, 1978 (No. 151) and Collective Bargaining Convention, 1981 (No. 154) provide information relevant to the application of the present Convention, which is therefore taken into consideration for the present observation.

*Article 1 of the Convention. Adequate protection of workers against acts of anti-union discrimination.* In its previous comments, the Committee had observed that despite the Labour Code providing for remedies in cases of anti-union discrimination, in the absence of a special jurisdiction, labour disputes were brought before ordinary courts, considerably delaying the procedures. On that occasion, the Committee had recalled that the existence of general legal provisions prohibiting acts of anti-union discrimination was insufficient unless they were accompanied by effective and rapid procedures to ensure their application in practice and urged the Government to take all necessary measures to ensure that adequate enforcement mechanisms be set up and operationalised expeditiously. While welcoming the fact that the Labour Code, as amended by law no. 136/2015: (i) recognizes union membership as a ground of discrimination (section 9 of the Labour Code) and; (ii) extends the protection provided to trade union representatives to one year after the expiration of their mandate (section 181 of the Labour Code), the Committee understands, based on the information provided by the Government in its report under Convention No. 151, that these amendments to the Labour Code have not modified the existing enforcement mechanisms to ensure access to more effective and rapid procedures against acts of anti-union discrimination. ***Bearing particularly in mind the reiterated ITUC denunciations of serious acts of anti-union discrimination and the alleged lack of adequate protection, the Committee requests the Government to inform of any development in this regard. It requests the Government to provide detailed information on the practical application of the remedies for anti-union discrimination set out in the law, in particular the availability and use of any applicable enforcement mechanisms, such as judicial actions before the courts, and the duration of proceedings.***

*Article 4. Promotion of collective bargaining.* In its previous comments, noting that section 161 of the Labour Code provides that a collective agreement can only be concluded at the enterprise or branch level and that no collective agreements had been concluded at the national level, the Committee had invited the Government to pursue its efforts to promote voluntary collective agreements at all levels, including at national level, and to provide information on any measures taken and their impact on the promotion of collective bargaining. The Committee notes with ***interest*** that the Labour Code, as amended, provides for, in the context of the collective bargaining process, the right of trade union representatives to receive information from the employer on all matters related to the negotiations within a week (section 163/2). The Committee further notes the Government's indication, included in its report under Convention No. 154, that: (i) a national database for collective agreements, trade unions and collective disputes, established in December 2019 with the support of the Office, will be accessible to various government agencies, and that it will assist public authorities in designing policy measures aimed at promoting collective bargaining and implementing best practices; (ii) between 2019 and 2020, 16 collective agreements were concluded in the tourism, food, energy and oil sectors, covering 10 per cent of workers in the private sector; and (iii) the number of collective agreements reported by the Government may be influenced by the failure of private employers to file collective agreements at the corresponding labour offices, despite the legal obligation to do so arising from section 167 of the Labour Code. While taking due note of the information provided by the Government, the Committee observes however that no indication was made by the Government regarding the conclusion of collective agreements at the national level and that no amendments have been made to section 161 of the Labour Code. ***The Committee therefore requests the Government to continue providing information on any further measures adopted or envisaged to promote collective bargaining including at the national level when the parties so desire. It further requests the Government to continue providing information on the number of collective agreements that have been concluded and that are in force, the sectors covered, and the percentage of workers covered.***

## Algeria

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the observations received from the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations received on 29 September and 9 October 2020 of the General and Autonomous Confederation of Workers in Algeria (CGATA) and the National Autonomous Union of

Public Administration Personnel (SNAPAP), supported by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Services International (PSI). The aforementioned organizations complain of the closure of the CGATA headquarters in Algiers, the persecution of hundreds of union members in numerous wilayas, and the arrest, detention and the convictions by the courts against the following trade union delegates: (i) Mr Kaddour Chouicha, Coordinator of the Higher Education Teachers' Union (SESS); (ii) Ms Lalia Djaddour, Member of the National Committee of Women Workers and National Secretary of SNAPAP; and (iii) Mr Maaza Belkacem, Member of the National Federation of Justice Sector Workers.

The Committee also notes the observations received on 30 September 2020 from the Trade Union Confederation of Productive Workers (COSYFOP), supported by the IUF, PSI and IndustriALL Global Union. COSYFOP complains of the following incidents, which occurred in 2020: (i) the establishment of a clone COSYFOP bureau by a general assembly not attended by representatives of affiliated unions and whose supposedly elected representatives have never been members of the Confederation; (ii) the closure under seal of COSYFOP headquarters on 21 February 2020; (iii) a government campaign against organizations affiliated with COSYFOP; (iv) judicial harassment against the following trade union delegates: Mr Raouf Mellal, President of COSYFOP; Mr Hamza Kherroubi, President of the National Union of Personal-Care Workers (SNAS); Mr Ayoub Merine, President of the National Federation of Social Security Fund Workers; Mr Benzine Slimane, Member of the Board of COSYFOP; Mr Nasser Hamitouche, COSYFOP Delegate, wilaya of Alger; Ms Tym Kadri, President of the Education Sector Staff Federation; Mr Omar Harid, General Secretary of the wilaya of Guelma office of COSYFOP; and Mr Mohamed Essalih Bensdira, President of the COSYFOP National Committee for the Unemployed; (v) the observations submitted by COSYFOP on the draft amendment to Act No. 90-14 were ignored by the Government.

The Committee previously noted the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, relating to legislative matters, most of which are already being examined by the Committee, and denouncing the persistence of violations of the Convention in practice. In particular, the ITUC alleges that the authorities are still making use of discretionary power to refuse the registration of certain unions. The Committee also noted the observations of the International Organisation of Employers (IOE), received on 30 August and 1 September 2019, containing the Employers' statements made before the 2019 Committee on the Application of Standards of the International Labour Conference. Lastly, the Committee noted the observations of COSYFOP, received on 28 August, 11 October and 13 November 2019 concerning serious obstacles to its freedom to organize its activities and making proposals for the current legislative reform in relation to the application of the Convention.

***Given the seriousness of the alleged acts, the Committee urges the Government to provide its comments in reply to the observations which it refers to above, insofar as not already addressed in the Government's November 2020 reply which the Committee refers to below, and, in particular, to provide detailed information concerning the allegations of closure of union premises and the arrest and conviction of trade union delegates, as well as those of the COSYFOP concerning the difficulties encountered in establishing an affiliated union in an engineering and construction enterprise.***

The Committee notes the following information provided by the Government in November 2020 in reply to certain comments: (i) the Government reports on the situation with regard to the registration of trade unions. The Committee refers to this information below; (ii) the Government indicates that the arrest of Mr Chouicha, Coordinator of the SESS, was not linked to his trade union activities but to activities disruptive to public order by the dissemination of destabilizing political pamphlets encouraging civil disobedience; he was subsequently released; (iii) the Government refers to the case of Mr Mellal, President of COSYFOP, recalling a decision handed down by the Supreme Court in October 2019 upholding his dismissal for professional misconduct. According to the Government, Mr Mellal practices a liberal profession and lost his credibility as a trade union representative because of his statements calling for political change by violence. The Committee observes that the professional situation of Mr Mellal was examined by the Committee on Freedom of Association, which made a number of recommendations (see 392nd Report, October 2020, Case No. 3210).

The Committee notes that the high-level mission called for by the Committee on the Application of Standards in June 2018 visited Algiers in May 2019. The mission subsequently submitted a report containing its analysis of the pending issues relating to the application of the Convention, and made recommendations. The Committee notes that the acceptance of the mission and manner in which it took place are a positive signal of the will of the Government to make progress in addressing the issues that have been pending for many years. The Committee has benefited from the information gathered by the mission during the meetings that it held, and from its conclusions and recommendations, all of which contribute to a more empirical understanding of the legal and practical difficulties relating to the exercise of freedom of association in the country.

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussion in the Conference Committee in June 2019 concerning the application of the Convention by Algeria. The Committee observes that, although the Conference Committee noted positively that the Government had accepted a high-level mission, it nevertheless expressed concern at the persistence of restrictions on the right of workers to establish and join trade union organizations, federations and confederations of their own choosing and the continued absence of tangible progress in bringing the legislation into compliance with the Convention. In its conclusions, the Conference Committee urged the Government to: (i) ensure that the registration of trade unions in law and in practice is in compliance with the Convention; (ii) process pending applications for the registration of free and independent trade unions, which have met the requirements set out by the law, and allow the free formation and functioning of trade unions; (iii) review the decision to dissolve the Autonomous National Union of Electricity and Gas Workers (SNATEGS); (iv) systematically and promptly provide trade union organizations with all necessary and detailed information to enable them to take corrective action or complete additional formalities for their registration; (v) amend section 4 of Act No. 90-14 in order to remove obstacles to the establishment by workers of organizations, federations and confederations of their own choosing, irrespective of the sector to which they belong; (vi) amend section 6 of Act No. 90-14 in order to recognize the right of all workers, without distinction whatsoever, to establish trade unions; (vii) take all appropriate measures to guarantee that, irrespective of trade union affiliation, the right to freedom of association can be exercised in normal conditions with respect for civil liberties and in a climate free of violence, pressure and threats; (viii) ensure impartial investigation and due process rights in order to guarantee the rule of law; (ix) reinstate employees of the Government terminated based on anti-union discrimination, where appropriate; and (x) ensure that the new draft Labour Code is adopted with no further delay and is in compliance with the text of the Convention. The Committee notes that, as requested, the Government subsequently provided in its report detailed information on the action taken on the recommendations of the Conference Committee.

#### Legislative issues

*Amendment of the Act on the exercise of the right to organize and reform of the Labour Code.* The Committee recalls that the Government has been referring since 2011 to the process of reforming the Labour Code with a view to responding to the Committee's concerns relating to the application of the Convention. The Committee notes that the Government informed the high-level mission of its intention to take a new initiative to respond rapidly to the comments calling for the amendment of sections 2, 4 and 6 of Act No. 90-14 on the exercise of the right to organize. This new initiative would consist of, during a first stage, revising the provisions referred to above and disassociating these amendments from the broader process of the revision of the whole of the Labour Code, which would be carried out during a second phase. However, the consultation procedures and time schedule remained to be determined. After noting from the meetings with workers' and employers' organizations that no discussions or consultations on the draft Labour Code had been held since 2017, the mission recommended the Government to engage without delay in the preparation of draft texts to amend the provisions of Act No. 90-14, in accordance with the Committee's recommendations, and to pursue the work of bringing the draft Labour Code into conformity with the technical comments provided by the Office in 2015, all in consultation with all of the social partners. In June 2019, the Government confirmed to the Conference Committee that it wishes to update the text revising the Labour Code in light of the amendments proposed by the Office and in consultation with all the economic and social partners.

The Committee notes the supplementary information provided by the Government indicating that the preliminary draft Bill to amend and supplement Act No. 90-14 has been prepared and submitted for their views to 47 workers' and employers' organizations and 27 ministerial departments. According to the Government, this preliminary draft Bill amends all the provisions on which the Committee has been commenting. Furthermore, the Government indicates that it was able to benefit from the Office's technical comments in February 2020 and that the latest version of the preliminary draft Bill takes due account thereof. The Government reports that the draft Bill is currently being discussed by the General Secretariat of the Government with a view to its adoption by the Government Council and then the Council of Ministers, prior to its transmission to Parliament. Furthermore, the Government refers to a new version of the Labour Code which includes the Office's 2015 comments. It indicates that the new text will be submitted for consultation with the economic and social partners and that the final version will then be submitted to the authorities with competence for its approval and enactment. The Committee welcomes the Government's indication that its comments have been taken into account in the text to amend Act No. 90-14 and that the new version, as well as the new version of the draft text revising the Labour Code have taken into account the Office's technical comments. With regard to the amendments to Act No. 90-14, the Committee refers to its comments below. In relation to the Labour Code, the Committee refers to the comments contained in its direct request. ***The Committee expects that the Government will take all the necessary measures to complete, without delay, the legislative reform called for by the Committee with***

***a view to giving full effect to the provisions of the Convention and that it will rapidly be in a position to report progress in this regard.***

*Article 2 of the Convention. Right to establish trade union organizations.* The Committee recalls that its previous comments related to section 6 of Act No. 90-14, which restricts the right to establish a trade union organization to persons who are originally of Algerian nationality or who acquired Algerian nationality at least ten years earlier. The Committee notes the Government's indication that the Bill includes an amendment to section 6 which removes the nationality requirement, which will permit foreign workers and employers to establish organizations and, under condition of three years' residence and in accordance with the terms and conditions established in the statutes, to become members of the executive and administrative bodies of trade unions. ***The Committee trusts that section 6 of Act No. 90-14 will be amended soon so that the right to establish a trade union organization and to take up positions in the management or administration thereof is recognized for all workers, irrespective of nationality.***

*Article 5. Right to establish federations and confederations.* The Committee recalls its previous comments relating to sections 2 and 4 of Act No. 90-14, which, read jointly, have the effect of restricting the establishment of federations and confederations in an occupation, branch or sector of activity. The Committee previously noted the Government's indication that section 4 of the Act would be amended to include a definition of federations and confederations. The Committee notes that, in its report, the Government merely indicates that the draft text revising Act No. 90-14 clarifies the concepts of central organizations, federations and confederations with a view to permitting their establishment irrespective of the sectors covered by their member unions. The Committee welcomes the Government's indication that the most recent amendment to section 4 of the Act will allow trade union organizations to establish federations, unions and confederations irrespective of the occupation, branch or sector to which they belong. ***The Committee trusts that section 4 of Act No. 90-14 will be amended soon in order to remove any obstacles to the establishment of federations and confederations by workers' organizations, irrespective of their sector.***

*Article 3. Restrictions on access to trade union office.* Finally, the Committee notes the observation made by the high-level mission concerning the application of section 2 of Act No. 90-14, which could in practice limit the full enjoyment and exercise of freedom of association. According to the mission, the use of the term "salaried employees" in section 2 of Act No. 90-14 could have the consequence in practice of limiting access to trade union office. The discussions held by the mission revealed that the dismissal of a trade union leader (or a founder member of an organization awaiting approval) in a specific enterprise or administrative body resulted in the loss of the status of salaried employee, and consequently *de jure* of the status of trade union officer under the terms of section 2 of Act No. 90-14. The mission observed that this situation was liable to prejudice the freedom of action of the organization and its right to elect its representatives in full freedom. In this regard, the Committee recalls that it considers that the requirement to belong to an occupation or to an enterprise in order to be able to hold trade union office is a requirement that infringes the right of organizations to draw up their constitutions and to elect their representatives in full freedom. It prevents trade unions from being able to elect qualified persons (such as full-time union officers or pensioners) or deprives them of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. There is also a real risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office (see the 2012 General Survey on the fundamental Conventions, paragraph 102). In light of the above, the Committee requested the Government to consult the social partners urgently on the measures to be taken to amend the requirements resulting from the application of section 2 of Act No. 90-14 so that trade union office in an enterprise or establishment is no longer restricted to persons employed by the enterprise or establishment, or to remove the requirement to belong to the occupation or to be an employee for at least a reasonable proportion of trade union officers. In the supplementary information provided, the Government indicates that genuine representation of workers before the employer, particularly through the union branch, which is democratically elected by members, is valuable not only because of its experience in the enterprise in question but also because it is familiar with the organization and culture of the enterprise. According to the Government, the definition of the term "worker" is linked with the matter of remuneration, paid in exchange for the effort made by the worker. This definition creates an employment relationship and a legal bond giving rise to rights and obligations for both parties to the employment relationship. Lastly, recalling that no trade union organization has raised the question of trade union representation, the Government indicates that the matter of the appointment by trade union organizations of persons from outside "employer bodies" could be envisaged under certain conditions and that a consultation on that issue will be held with the social and economic partners. ***The Committee expects that the Government will initiate without delay consultations with the social partners with regard to the granting of authorization for trade union representation to persons from outside the enterprise or establishment. It recalls the need to amend the requirements resulting from the application of section 2 of Act No. 90-14 so that trade union office in an enterprise or establishment is no longer restricted to persons employed by the enterprise or establishment in question,***

***or to remove the requirement to belong to the occupation or to be an employee for at least a reasonable proportion of trade union officers.***

### Registration of trade unions in practice

The Committee recalls that it has been commenting for many years on the issue of the particularly long delays, sometimes amounting to several years, in the processing of applications for the registration of trade unions or the refusal by the authorities to register certain independent trade unions without giving reasons.

The Committee notes that the Government informed the high-level mission, as well as the Conference Committee, of the recent initiative by the Ministry of Labour to update the files on the establishment of unions and to invite organizations which wish to register or for which the applications are under examination to meet with the Ministry to bring up to date the administrative documents, and particularly those relating to their occupational situation. According to the Government's report and the supplementary information provided, this initiative resulted in the registration of 138 representative organizations (91 workers' organizations and 47 employers' organizations) by the month of March 2020.

The Committee also notes the following information provided by the Government concerning the registration of unions referred to in its previous comments: (i) the Autonomous National Union of Cleaning and Sanitation Workers (SNATNA) and the National Union of Mobilis Workers (SNTM) have been registered; (ii) the Autonomous Algerian Union of Transport Workers (SAATT) and the Autonomous Union of Attorneys of Algeria (SAAVA) have not yet responded to the communications from the Ministry requesting them to update their applications for registration. Efforts by the public authorities to contact these unions have been unsuccessful; (iii) the Government reports that the Higher Education Teachers Solidarity Union (SESS) was registered in February 2020; (iv) the processing of the files for the establishment of the Autonomous National Union of Paper and Packaging Manufacture and Transformation Workers (SNATFTPE), the Autonomous National Union of Wood and Derivative Manufacturing Workers (SNATMBD) and the Autonomous National Union of EUREST Workers of Algeria (SNATE) are the territorial responsibility of the wilaya or commune. According to the Government, efforts by the public authorities to contact these unions have been unsuccessful; (v) the file for the establishment of the Algerian Union of Employees of the Public Administration (SAFAP) is pending due to a dispute concerning a disagreement between the founding members relating to the presidency of the organization; a conciliation attempt is under way, however, and the Government will keep the Office informed on progress in this case; (vi) the Government reiterates that the General and Autonomous Confederation of Workers of Algeria (CGATA) has not provided documents concerning its establishment in accordance with the provisions of the Act as it is not composed of any legally established union, as required by the law, which requires any confederation to be established by a group of legally registered or established unions; and (vii) according to the Government, persons unrelated to the Trade Union Confederation of Productive Workers (COSYFOP) obtained possession of the registration receipt of the organization without the presence of any member or affiliate. However, the Government admits that the COSYFOP is composed of three legally constituted unions.

The Government adds that, to give effect to the recommendations of the Conference Committee, exchanges of communications and meetings with the representatives of unions seeking registration are now recorded in reports co-signed by the applicants. Finally, the Government indicates that it is currently engaged in the preparation of a manual on the procedures for the registration of unions.

***The Committee welcomes the follow-up information provided by the Government and requests it to continue providing updated information on the processing of applications for the registration of trade unions.*** The Committee refers below to the specific situation of certain unions.

The Committee notes the points indicated below that the high-level mission raised concerning the registration of unions and which it considers to be particularly pertinent. In the first place, the mission observed that the legislative provisions setting out the conditions for the establishment of federations and confederations of unions covering different sectors appear to be interpreted in an inconsistent and very restrictive manner according to the organizations concerned. The mission accordingly noted the case of a confederation that was not provided with a receipt on the grounds that it groups together affiliates from several sectors while, in another case, it noted the registration of an employers' organization in February 2019 which has affiliates from four different sectors. The mission was also informed of the case of a trade union confederation with affiliates in several sectors. The mission therefore recommended that the Government adopt a consistent position in practice and to accept the possibility for organizations to be composed of affiliates from different occupations, branches and sectors, in line with the Committee's comments concerning the application of sections 2 and 4 of Act No. 90-14. The mission also therefore requested that the Government register any organizations in this situation which apply for registration. The Committee also notes that the mission observed inconsistencies in the content of the communications denying registration. In most cases, the administration's communication merely indicates that "the application to certify the establishment of the organization does not meet the conditions set out by Act

No. 90-14 of 2 June 1990 on the exercise of the right to organize and it requests the applicant to abide by that Act", without other comments. The mission therefore encouraged the Government to systematically and rapidly provide the organizations with all the necessary information to enable them to take corrective measures or to fulfil additional formalities for their registration.

In general, while welcoming the efforts made by the Government to clarify the manner in which the administration processes applications for the registration of unions, the Committee is nevertheless ***concerned*** by the fact that the registration of most of the federations and unions referred to in its comments, and particularly the CGATA, SAAVA and SAATT, remain pending. The Committee also notes the explanations provided on the denial of registration by the administration for the Confederation of Algerian Unions (CSA), COSYFOP and SAFAP, the representatives of which were able to meet with the high-level mission. The Committee notes that, taking into account the information provided both by the organizations themselves and by the authorities, the mission recommended the Government to proceed on an urgent basis with the registration of the CGATA, CSA and SAFAP.

The Committee notes with ***regret*** that the Government confines itself essentially to providing in its report and the supplementary information provided in 2020 the same explanations that it had previously furnished on the rejection of the applications for registration in the case of the organizations referred to above, most of which are based on a reading of the legislative provisions which, as recalled above by the Committee, are not in conformity with the Convention. The Government should also take into account the process of the amendment of these provisions which it has commenced in order to give effect to the Convention. ***The Committee therefore expects that the Government will take due account of the elements recalled above in reconsidering on an urgent basis the applications for the registration of the CGATA, CSA and COSYFOP. It also refers to the recommendations of the high-level mission and calls on the Government to register the SAFAP as soon as the internal dispute to which it refers is resolved. It expects the Government to be able to report, without further delay, tangible progress in the positive processing of these applications for registration which, in certain cases, have been pending for several years. The Committee also once again encourages the Government to provide systematically and rapidly to the organizations for which registration is denied by the administration all the necessary information to enable them to take corrective measures and to fulfil the additional formalities required for their registration.***

With regard to the situation of the Autonomous National Union of Electricity and Gas Workers (SNATEG), the observations of which, received in July 2018, reported numerous obstacles to its freedom to organize its activities, the Committee recalls that SNATEG presented a complaint to the Committee on Freedom of Association, which once again ruled on the merits of the case (see 392nd Report, October 2020, Case No. 3210) and formulated recommendations including calling on the Government to conduct an independent investigation to determine the circumstances that led to the administrative decision recognizing voluntary dissolution of SNATEG, despite evidence presented by the union that no such voluntary dissolution had occurred. Referring to the recommendations made by the Conference Committee in June 2019, the Committee on Freedom of Association requested the Government to review the decision to dissolve SNATEG without delay. Lastly, that Committee urged the Government to implement its recommendations without delay in order to ensure an environment in the industrial energy enterprise concerned in which trade union rights are respected and guaranteed for all trade union organizations, and in which workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation. ***The Committee requests the Government to indicate the measures taken to give effect to the recommendations of the Committee on Freedom of Association in this regard.***

***In general, in view of the measures that it is taking to address the legal and practical issues raised in relation to the implementation of the Convention, the Committee trusts that the Government will continue to avail itself of the technical assistance of the Office.***

The Committee is raising other matters in a request addressed directly to the Government that reiterates the content of its direct request adopted in 2019.

***[The Government is asked to reply in full to the present comments in 2022.]***

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

The Committee notes the observations received on 30 September 2020 from the Trade Union Confederation of Productive Workers (COSYFOP), supported by Public Services International (PSI), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), and IndustriALL Global Union (IndustriALL). As it has not received any supplementary information from the Government, the Committee proceeded with the examination of the application of the Convention on the basis of the information at its disposal in 2019, as well as the observations of COSYFOP (see *Articles 1* and *2* of the Convention below).

*Articles 1 and 2 of the Convention. Adequate protection against acts of anti-union discrimination and interference.* The Committee notes the observations denouncing discrimination against trade union leaders and members, received between 2017 and 2019, from the International Trade Union Confederation (ITUC), the Autonomous National Union of Electricity and Gas Workers (SNATEG), and COSYFOP. The Committee notes that this issue has also been addressed repeatedly by the Committee on the Application of Standards of the International Labour Conference (hereinafter the Conference Committee) during its discussion of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), (discussions held in June 2017, June 2018 and June 2019), which has consistently requested the Government to report on the situation of trade union leaders and members who have been the victims of anti-union dismissal. The Committee further notes that the Committee on Freedom of Association has examined several cases relating to the harassment and dismissal of trade union leaders and members, as indicated in the observations of the trade union organizations. The Committee notes that, within the framework of the recommendations made by the Conference Committee in June 2018, a high-level mission visited Algiers in May 2019 and was able to gather information on the spot relating to the situation of the dismissed trade unionists. Finally, the Committee notes that the Government has regularly provided information in response to the observations received from the trade union organizations, as well as in response to the recommendations made by the Conference Committee.

The Committee recalls that in 2016 the ITUC and the CGATA provided observations on acts of anti-union discrimination against trade union leaders and the dismissal of trade union members following social protests in enterprises in various sectors and in the public sector (justice, postal services, public health, the national water agency). In this regard, it notes the information provided by the Government on the measures taken for the reinstatement of the workers dismissed in the public administration. The Committee notes that certain trade union leaders have still not been reinstated, in certain cases despite court rulings in their favour. ***The Committee therefore requests the Government to ensure, on the one hand, the immediate implementation of all court decisions ordering the reinstatement of trade union leaders and trade unionists in the public administration and on the other hand, to continue to provide information on other dismissed trade union leaders and trade unionists whose situation has not yet been resolved.***

The Committee notes that the observations received from trade unions since 2017 relate largely to the mass dismissal of the members of SNATEG by an enterprise in the gas sector and interference in the activities of the union. The Government has provided information on the situation of the dismissed trade unionists, recently reporting measures for the reinstatement of most of the workers concerned, situations that are in the process of being resolved and dismissals that have been confirmed on the grounds of serious faults in the case of certain workers. In this regard, the Committee recalls that SNATEG has lodged a complaint with the Committee on Freedom of Association (CFA) and that the high-level mission gathered updated information in the field on the case from both the Government and trade union representatives. On this basis, the CFA once again issued an opinion on the merits of the case in its meeting in October 2020 and made recommendations calling on the Government to take the necessary measures to give effect, without further delay, to the court rulings and decisions of the Labour Inspectorate concerning the reinstatement of members of SNATEG, and to provide information on the allegations that the majority of the workers reinstated into the enterprise were obliged to give up their membership of SNATEG and to join another trade union within the enterprise (see 392nd Report of the CFA, Case No. 3210, October 2020). ***The Committee requests the Government to indicate the measures taken to follow up on the recommendations of the CFA and in particular those concerning the trade union leaders of SNATEG who have still not been reinstated.***

The Committee notes the observations of COSYFOP on acts of discrimination against its members since the recent renewal of its executive body. The Committee notes that in May 2019 the high-level mission met the representatives of COSYFOP, who provided information on the harassment of its leaders, and particularly Mr Raouf Mellal, Mr Ben Zein Slimane and Mr Abdelkader Kouafi, and intimidation at work against Ms Haddad Racheda and Ms Sarah Ben Maich, which led to the latter giving up their trade union functions. The Committee also notes that Mr Mellal was subjected to physical violence during his detention as a result of his trade union activities and is regularly the subject of intimidation and abusive detention. In addition, the Committee notes that COSYFOP denounces the following measures of discrimination and interference against affiliated trade union organizations: (i) the dismissal in October 2019 of 17 leaders and members of the National Union of Workers of BATIMETAL-COSYFOP, and the threat by the enterprise not to reinstate them unless they leave the union. The reinstatement of the union delegates by the enterprise was effective only after they had left the union, and it was revealed that one of these former delegates has been, since February 2020, an office member of an union constituted by anti-union interference; (ii) threats of dismissal and criminal prosecution against members of the Workers' Union of the Commission for Electricity and Gas Regulation (STCREG); (iii) the dismissal of all the leaders of the National Union of the Higher Institute of Management and the refusal of the Labour Inspectorate to enforce the provisions for the protection of trade union delegates under section 56 of Act No. 90-14 on

the terms and conditions of the exercise of the right to organize; and (iv) the circular of the Secretary General of the Ministry of Labour, inciting all the Social Solidarity Funds to dismiss all the members of the National Federation of Workers of the social security funds affiliated to COSYFOP, which led to the judicial harassment and dismissal of the President of the Federation, who had resigned from COSYFOP shortly after being reinstated in January 2020. ***The Committee notes with concern the seriousness of the allegations and urges the Government to take all the necessary measures to ensure that the competent authorities conduct the necessary investigations into acts of anti-union discrimination against the members of COSYFOP and its affiliated trade union organizations. The Committee expects the Government to take corrective measures to re-establish the rights of workers who are victims of anti-union discrimination and to obtain the cessation without delay of interference by employers and administrative authorities in the exercise of freedom of association. The Committee urges the Government to provide its comments and detailed information on this subject.***

*Revision of the legislation.* With regard, in general, to the need to provide adequate protection to trade union leaders and members against acts of anti-union discrimination, the Committee refers to the concerns expressed by the high-level mission concerning delays in complying with court rulings ordering the reinstatement of trade union leaders, which have still not been given effect, and the excessive use of judicial action in relation to the respective procedures. The Committee also notes that the high-level mission identified difficulties in the application of *Article 1* of the Convention to the founding members of unions. According to the high-level mission, under the current legislation and procedures, it would be possible for an employer to dismiss the founding members of a union during the period when it was applying for registration, which in practice can take several years, without the latter benefiting from the protection afforded by the legislation against anti-union discrimination. ***The Committee urges the Government to engage without delay, in consultation with the social partners, in an in-depth review of the whole of the legal framework and of practice in relation to protection against anti-union discrimination, with a view to the adoption of the necessary measures to ensure adequate protection to trade union leaders and members during the period when the union that has been established is applying for registration. It requests the Government to report any progress achieved in this respect, and trusts that the Government will avail itself of the technical assistance of the Office for this purpose.***

*Application of the Convention in practice.* The Committee notes the statistics provided on the number of collective agreements registered by the Labour Inspectorate between 1990 and 2019, as well as the number of workers covered. ***The Committee invites the Government to continue providing any available statistics on the number of collective agreements registered and, where possible, to indicate the sectors and number of workers covered.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Angola

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

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* In its previous comments, the Committee noted the observations of the National Trade Union of Teachers (SINPROF) and Education International (EI), received on 1 September 2017, alleging the existence of anti-union reprisals by the Government in several provinces of the country. In the absence of information received from the Government in this regard, the Committee recalls that it is the responsibility of the latter to take all necessary measures to ensure that the competent authorities conduct the necessary enquiries into these alleged acts of anti-union discrimination, and to take remedial measures and apply suitable penalties if the trade union rights recognized in the Convention are found to have been impaired. ***The Committee urges the Government to provide its comments in this regard.***

*Article 4. Measures to promote collective bargaining. Compulsory arbitration.* The Committee recalls that for several years it has been requesting the Government to take the necessary measures to amend sections 20 and 28 of Act No. 20-A/92 on the right to collective bargaining, which impose compulsory arbitration in terms contrary to the indications of the Committee. In its previous comments, the Committee noted that section 273(2) of the General Labour Act No. 7/2015 establishes that collective labour disputes shall be resolved through mediation, conciliation and voluntary arbitration, without prejudice to specific legislation, and further noted that section 293 establishes that collective labour disputes shall be settled preferably through voluntary arbitration. Given that the General Labour Act of 2015 repeals any contrary provision, the Committee requested the Government to indicate whether sections 20 and 28 of Act No. 20-A/92, which impose compulsory arbitration on an array of non-essential services, had been repealed or whether these sections remained in force. The Committee notes that the Government indicates that there is indeed a contradiction between the two above-mentioned items of legislation and that the contradiction should be resolved when Act No. 20-A/92 is revised. ***Recalling that compulsory arbitration in the context of collective bargaining is only acceptable in relation to public***

***servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and in the event of an acute national crisis, the Committee expects that sections 20 and 28 of Act No. 20-A/92 will be amended rapidly and requests the Government to provide information on any progress achieved in this regard.***

*Articles 4 and 6. Collective bargaining of public servants not engaged in the administration of the State.* The Committee recalls that for several years it has been requesting the Government to take measures to ensure that the trade union organizations of civil servants who are not engaged in the administration of the State have the right to negotiate both wages and other terms and conditions of employment with their public employers. The Committee recalls that, under *Article 6* of the Convention, a distinction has to be made between, on the one hand, public servants who, through their functions, are directly engaged in the administration of the State (for example, in certain countries, officials in government ministries and other similar bodies and their auxiliary personnel), who may be excluded from the scope of application of the Convention and, on the other hand, all other persons employed by the Government, public enterprises or autonomous public institutions, who should benefit from the guarantees set out in the Convention (for example, employees in public enterprises, employees in municipal services and employees in other decentralized bodies, as well as public sector teachers). The Committee notes that the Government confines itself to indicating that the collective bargaining rights of public servants not engaged in the administration of the State are safeguarded under the General Labour Act of 2015 and Act No. 20-A/92 on the right to collective bargaining. In this regard, the Committee observes that under the terms of sections 1(1) and 2(f) of the General Labour Act, the only public employees covered by the Act are those in public enterprises and that section 2 of Act No. 20-A/92, similarly, excludes officials in the central and local State public administration from the scope of its application, as well as workers in public services not organized as enterprises. In view of the foregoing, the Committee observes that the scope of application of the laws mentioned above does not appear to cover all categories of workers considered by the Committee to be public servants not engaged in the administration of the State. ***In the absence of other information made available to it, the Committee requests the Government to specify the provisions under which or the collective negotiation mechanisms through which the various categories of public servants not engaged in the administration of the State can negotiate their conditions of work and employment, and to provide detailed information on the various agreements concluded with organizations of public servants and public employees. The Committee further requests the Government to ensure that its recommendations are taken into account during the revision of Act No. 20-A/92 referred to by the Government and requests it to indicate any progress in this regard.***

***The Committee reminds the Government that it may seek technical assistance from the Office in connection with the revision of the laws relating to the application of the Convention.***

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

## Antigua and Barbuda

### Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 2002)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 4 and 5 of the Convention.* In its previous comments, the Committee had requested the Government to take the necessary measures to grant civil servants and their organizations sufficient legal protection against anti-union discrimination and interference, and had requested the Government to provide information on cases concerning anti-union discrimination. The Committee notes the information contained in the Government's report that there are no cases to report with regard to anti-union discrimination and that the Antigua and Barbuda Constitution grants inalienable rights to citizens. ***The Committee once again requests the Government to take the necessary measures to grant civil servants and their organizations sufficient legal protection against anti-union discrimination and interference and requests the Government to provide information of any cases concerning anti-union discrimination (especially with respect to the procedures and sanctions imposed).***

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

## Argentina

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

The Committee takes note of the supplementary information provided by the Government, in light of the decision adopted by the Governing Body at its 338th Session (June 2020), reporting on the measures adopted in the context of the COVID-19 pandemic regarding social dialogue and the application of the

Convention (such as the extension of the terms of office of union officers and representatives). The Committee welcomes the resumption of the activities of the standards subcommission of the Social Dialogue Commission, with a view to making progress on the tripartite processing of matters relating to the ILO supervisory bodies. In this regard, the Government states that the ILO has been invited to participate in the tripartite meetings and that forums are being opened to resolve differences between the provinces, the Government and the social actors.

The Committee also notes the observations of:

(i) the Industrial Confederation of Argentina (UIA), sent with the supplementary report, which underline the impetus given by the Government to social dialogue as a tool for reaching agreements to overcome the crisis and indicate that meetings have been held to move forward on pending issues;

(ii) the General Confederation of Labour of the Argentine Republic (CGT RA), received on 27 September 2020, which refer to the measures adopted to address the pandemic and affirm that the trade union movement has laid the foundations for a sustained dialogue with the Government and the employers (they emphasize the importance of setting up an economic and social council);

(iii) the Confederation of Workers of Argentina (CTA Autonomous), received on 30 September 2020, which denounce the Government's persistence in refusing to align the trade union legislation to the Convention. The CTA highlights the efforts of the International Department of the Ministry of Labour, Employment and Social Security to keep the Social Dialogue Commission and its subcommissions active. However, it expresses regret that nothing has been done in these bodies regarding the reform of the Trade Unions Act. CTA Autonomous also submits additional allegations of violations of the Convention in practice (concerning delays and the refusal to register or grant legal personality to trade unions, crackdowns on public demonstrations in September 2019, criminalization of a strike of drivers in October 2019, espionage and political harassment at a provincial trade union office, and acts of interference in two trade union election procedures). ***The Committee requests the Government to send its observations on these matters.***

***The Committee hopes that the additional issues raised in these supplementary observations will also be examined and addressed in a tripartite manner in the context of the standards subcommission of the Social Dialogue Commission. The Committee expresses the firm hope that specific measures will be taken in the same context to address issues raised in previous observations, including bringing the legislation referenced and alluded to in this observation into conformity with the Convention.***

Furthermore, the Committee reiterates the content of its comments adopted in 2019, which are reproduced below.

The Committee notes the observations of the UIA, with the support of the International Organisation of Employers, received on 30 August 2019, welcoming the creation of the Social Dialogue Commission, and particularly its subcommission on specific cases. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, and of the CGT RA and CTA Autonomous, both received on 3 September 2019, and of the Confederation of Workers of Argentina (CTA Workers), received on 10 September 2019. The Committee notes that some of the matters raised by the social partners are the subject of cases that are before the Committee on Freedom of Association (among others, Cases Nos 3229, 3257, 3272 and 3315). The Committee notes that the other observations relate to matters already raised, such as allegations of police repression and restrictions on the exercise of the right to strike and other violations of the Convention. ***The Committee hopes that the matters raised will be examined and addressed in a tripartite manner within the framework of the Social Dialogue Commission.***

With regard to, and following up the matters raised in 2018, the Committee welcomes the information provided by the Government on the establishment and operation of the Social Dialogue Commission through Decision No. 225/2019. The Committee notes in particular: (i) its functions, including acting as an intermediary with the social partners to improve compliance with ratified Conventions: (ii) the creation of two subcommissions – one on labour standards (for the examination of subjects related to regular reporting under articles 12, 29 and 23 of the ILO Constitution, as well as representations under article 24), and the other on specific cases (for the examination of complaints relating to freedom of association); and (iii) its initial activities (two plenary meetings, three meetings of the subcommission on standards and two of the subcommission on cases, which examined two cases that are before the Committee on Freedom of Association). ***The Committee encourages the Government to continue to reinforce this social dialogue body and requests it to continue providing information on developments in its work.***

*Articles 2, 3 and 6 of the Convention. Trade union independence and the principle of non-interference by the State.* The Committee recalls that for many years it has been requesting the Government to take measures to amend the following provisions of Act No. 23551 of 1998 on trade union associations (LAS) and of the corresponding implementing Decree No. 467/88, which are not in conformity with the Convention:

– *Trade union status.* (i) section 28 of the LAS, under which, in order to challenge an association's status, the petitioning association must have a "considerably larger" membership; and section 21 of implementing Decree No. 467/88, which qualifies the term "considerably larger" by providing that the association claiming trade union status must have at least 10 per cent more dues-paying members than the organization that currently has the status; (ii) section 29 of the LAS, under which an enterprise trade union may be granted trade union status only when no other organization with trade union status exists in the geographical area, occupation or category; and (iii) section 30 of the LAS, under which, in order to be eligible for trade union status, unions representing a trade, occupation or category have to show that they have different interests from the existing trade union or federation, and that the latter's status must not cover the workers concerned.

– *Benefits deriving from trade union status.* (i) section 38 of the LAS, under which the check-off of trade union dues is allowed only for associations with trade union status, and not for those that are merely registered; and (ii) sections 48 and 52 of the LAS, which afford special protection (trade union immunity) only to representatives of organizations that have trade union status.

The Committee has noted the rulings of the Supreme Court of Justice of the Nation and other national and provincial courts finding various provisions of the legislation referred to above unconstitutional, particularly with regard to trade union status and trade union protection. Similarly, the Committee welcomes a recent opinion of 27 August 2019 of the Public Prosecutor submitted to the Supreme Court of Justice indicating that the system of the check-off of trade union dues as set out in section 38 of the LAS is prejudicial to the freedom of association of organizations that are only registered and is therefore unconstitutional.

The Committee also notes that the CTA Autonomous and the CTA Workers once again emphasize the need to amend these provisions of the LAS, as well as sections 31(a) and 41(a), which are reported to have been found unconstitutional by the Supreme Court of Justice. The organizations denounce the lack of political will by the Government in this regard, indicating that it has not proposed any amendments to the LAS and has not supported any of the draft amendments that have been submitted for this purpose and that, although a standards subcommission has been established in the Social Dialogue Commission, the subject of the need to bring the national legislation into conformity with the Convention has not been included on its agenda. The Committee notes the Government's indication that the reform of the labour legislation has undoubtedly not been raised for discussion in the Social Dialogue Commission because the social partners themselves have not secured the minimum level of agreement required.

***The Committee expresses the firm hope that all the necessary measures will be taken without further delay to bring the LAS and its implementing Decree into full conformity with the Convention. The Committee considers that structured tripartite dialogue in the Social Dialogue Commission should provide an appropriate forum to carry out an in-depth tripartite examination with a view to the preparation of draft amendments that take into account all of the matters raised. Recalling that it has been requesting the amendment of the legislation referred to above for over 20 years, and that many of the provisions concerned have been found to be unconstitutional in specific judicial procedures, the Committee hopes and expects that it will be able to note tangible progress in the near future.***

*Delays in procedures for the registration of trade unions and to obtain trade union status.* For many years, the Committee has been requesting the Government to take the necessary measures to avoid unjustified delays in procedures for the registration of trade unions or the granting of trade union status. The Committee notes that the ITUC, CTA Workers and CTA Autonomous once again denounce the persistence of delays and refusals by the administrative authorities to recognize trade union status and to simply register trade unions. They allege that, although the latter procedures should be completed within 90 days, the authorities paralyze the procedure for years or set out requirements not envisaged in the law, obliging the organizations concerned to operate without legal status. The organizations once again provide long lists of cases in which trade union registration has not been granted (alleging unresolved delays of up to 16 years) as well as cases of trade union status (including the applications by the Federation of Energy Workers of the Argentine Republic (FeTERA) and the CTA Workers, for which the initial applications were submitted 19 and 15 years ago, respectively), and they denounce the fact that the Government has not taken any measures to resolve the situation. The Committee also notes the Government's indication that delays in the procedure for the registration of trade unions and the granting of trade union status are in the majority due to: (i) delays by the unions to comply with the requirements set out in the law; and (ii) the existence of pre-existing unions, which defend their position and lodge administrative and judicial appeals. The Committee recalls once again that such allegations of undue delays have been the subject of various cases brought before the Committee on Freedom of Association, both in recent complaints (Cases Nos 3331 and 3360) and more long-standing cases, and particularly the case relating to FeTERA, No. 2870, in which the Committee on Freedom of Association firmly urged the Government to take the necessary measures to grant the organization trade union status. ***The Committee once again firmly urges the Government to take the necessary measures to avoid unjustified delays or refusals in the procedures for the registration of trade unions or the granting of trade union status and***

***to report any progress made in this respect. The Committee trusts that this issue will also be examined by the Social Dialogue Commission with a view to finding effective solutions which take into account the concerns of all the parties concerned.***

*Article 3. Right of trade unions to elect their representatives in full freedom and to organize their administration and activities.* In its previous comments, the Committee noted the allegations made by workers' organizations concerning interference by the Government in trade union elections and delays in the registration of trade union officers. The Committee also noted with concern that some of these allegations had already been the subject of recommendations by the Committee on Freedom of Association (in particular, in Cases Nos 2865 and 2979). The CGT RA and the CTA Autonomous also referred to the publication of Provision No. 17-E/2017 by the National Directorate of Trade Union Associations, which ordered the exclusion from the trade union register of organizations that had not confirmed their operational activity within three years, in compliance with the periodic legal requirement set out in the LAS (the CTA Autonomous alleged that this Provision conferred immense discretionary power to sanction trade unions which were critical of the Government). The Committee welcomes the fact that Provision No. 17-E has been set aside by the governmental Decision No. 751/2019. The Committee also notes the Government's indication that: (i) the registration of officers is not subject to any time limits and the principal reason for delays is the submission of applications that are incomplete or lack documentation; and (ii) the procedure allows the examination of challenges to the electoral process, thereby guaranteeing the exercise of trade union democracy. The Committee also notes that the CTA Autonomous once again denounces: (a) interference with unions by the government authorities through the designation of delegates to assume administrative functions and to replace the representatives elected by the workers (although this has diminished over the past year, since December 2015, there has been interference of this type with 23 trade unions); and (b) the failure to issue, or delays in issuing, the accreditation of trade union officials, affecting their ability to avail themselves freely of the bank accounts of the unions and their capacity to operate, as well as other acts by the administrative authorities affecting the financing of unions, such as the failure to approve the document requiring the check-off of union dues. The Committee recalls once again the importance of ensuring non-interference by the administrative authorities in trade union elections and of avoiding undue delays in the accreditation of trade union officials, as well as ending any other interference that undermines the right of trade unions to elect their representatives in full freedom and to organize their administration and activities. ***In this regard, the Committee firmly hopes that the issues raised by the workers' organizations will be examined in the near future by the Social Dialogue Commission with a view to the adoption of appropriate measures, including at the legislative level where necessary, and it requests the Government to provide information on any developments in this respect.***

## Collective Bargaining Convention, 1981 (No. 154) (ratification: 1993)

The Committee takes note of the supplementary information provided by the Government in the light of the decision adopted by the Governing Body at its 338th Session (June 2020), which provides detailed and updated information on the state of collective bargaining and on the collective agreements approved in the country.

The Committee also notes (i) the observations of the Industrial Confederation of Argentina (UIA), communicated with the Government's supplementary report and relating to the role of collective bargaining in the management of the COVID-19 pandemic, alluding in particular to the adoption of bipartite protocols on action to prevent spread of the disease in workplaces; (ii) the observations of the General Confederation of Labour of the Argentine Republic (CGT RA), received on 27 September 2020, regarding the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Those observations provide information on the situation of collective bargaining in the context of the pandemic, referring in particular to agreements between the CGT RA and the UIA in respect of a minimum wage floor and stability of employment, and recommending the automatic 60-day approval of the agreements concluded under section 223bis of the Labour Contracts Act and in accordance with the parameters agreed by the social partners. In that connection, those organizations allude to Ministerial Resolution No. 397/2020 which, as agreed, implements automatic approval of agreements; they report that certain sectoral agreements have been signed within this framework. The CGT RA adds that while most organizations postponed the formal start of 2020 negotiations, due to continued restrictions imposed by the pandemic, a number of unions began and completed their collective agreements; and (iii) the observations of the Confederation of Workers of Argentina (CTA Autonomous), received on 30 September 2020, also regarding collective bargaining in the context of the pandemic, and indicating that CTA Autonomous was not consulted in respect of the measures taken after the agreement between the CGT and the UIA, although the organization had asked to be included and had proposed measures to the authorities. It regrets that, in confronting the crisis, use had not been made of social dialogue through the Social Dialogue Commission. The observations also refer to the Supreme Court ruling of 3 September 2020, giving exclusive collective bargaining rights to workers' organizations with trade union status. The Committee notes that CTA Autonomous goes on to refer to observations by the Association of State

Workers (ATE), which affirm that: (i) not all provinces have legislation that specifically guarantees State workers' right to bargain collectively and that very few provinces have signed a collective labour agreement; and (ii) there is no guarantee of the existence of an impartial body that can act in cases of collective disputes between the State and its employees.

The Commission welcomes the use of collective bargaining in the management of the pandemic. The Committee also stresses the importance of a broad social dialogue with all representative workers' and employers' organizations when taking action to address crises affecting the interests of their members. ***The Committee requests the Government to communicate its observations regarding the issues raised in these supplementary observations.***

The Committee reviewed the application of the Convention on the basis of the additional information received from the Government and the social partners this year (see Article 5 below), and the information at its disposal in 2019.

The Committee notes the observations of the Industrial Confederation of Argentina (UIA), received on 30 August 2019. The Committee also notes the observations of the Argentine Federation of the Judiciary (FJA), received on 27 August 2019, as well as of the General Confederation of Labour of the Argentine Republic (CGT-RA), received on 3 September 2019, and of the Confederation of Workers of Argentina (CTA Workers), received on 10 September 2019.

The Committee welcomes the creation of the Social Dialogue Committee and refers, in this respect, to its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Article 5 of the Convention. Promotion of collective bargaining in the country.* The Committee notes the detailed information provided by the Government concerning the collective bargaining situation in the country in 2017 (in which a total of 1,004 collective agreements and accords were signed, covering 4,180,000 workers), in 2018 (in which a total of 1,653 agreements and accords were signed, covering 4,300,000 workers) and in the first three months of 2019 (during which a total of 1518 approved agreements and accords were signed, covering 3,982,813 workers).

*Collective bargaining of workers in the national judiciary.* In its previous comments, the Committee urged the Government to take the necessary measures to guarantee the collective bargaining rights of workers in the national judiciary and the provinces. The Committee notes that, once again, the Government refers to the division of powers and recalls that the regulation of collective bargaining in the national judiciary falls within the exclusive competence of the Supreme Court and the legislative branch. The Government adds, in this respect, that two bills in that area had been submitted recently, which had lost parliamentary status without being addressed. Regarding the judiciaries of the different provinces, the Government indicates that progress has been made, reflected in intense bipartite negotiation activities, and indicates that collective bargaining is implemented in the Autonomous City of Buenos Aires, as well as in the provinces of Buenos Aires, Tucuman, Chaco, Rio Negro and Mendoza. The Committee also notes that the CGT RA states that the national judiciary continues to invoke its independence to evade the exercise of collective bargaining; and that the FJA reports that neither at the national level nor in 23 of the country's 28 provinces is the right of collective bargaining of workers in the judicial system respected. The Committee also recalls that these inadequacies in the promotion of collective bargaining of workers in the national judiciary have been the subject of various cases before the Committee on Freedom of Association (for example, Cases Nos 3078 and 3220). ***The Committee trusts that the Social Dialogue Committee will carry out an analysis of the necessary measures, adapted to national conditions, including legislation, which must be adopted to ensure the right to collective bargaining of workers in the national judiciary and in all the provinces of Argentina. The Committee encourages the Government to consider the possibility of inviting representatives of the judicial and legislative powers in question to engage with the Social Dialogue Committee for the purposes of this discussion. The Committee requests the Government to keep it informed of any developments in this respect.***

## Armenia

### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2006)

The Committee notes the observations of the Republican Union of Employers of Armenia (RUEA) and of the Confederation of Trade Unions of Armenia (CTUA) transmitted with the Government's report, which refer to the issues raised by the Committee below. The Committee further notes the CTUA observations received on 30 September 2020 referring to the issues raised by the Committee below and to the application of the Convention in practice***. The Committee requests the Government to provide its comments thereon.***

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* The Committee had previously requested the Government to take the necessary

measures to amend the Constitution and the Law on Trade Unions so as to ensure that the following categories of workers could establish and join organizations of their own choosing: (i) employees of the Prosecutor's Office, judges and members of the Constitutional Court; (ii) civilians employed by the police and security service; (iii) self-employed workers; (iv) those working in liberal professions; and (v) workers in the informal economy. The Committee notes the Government's indication that constitutional amendments were adopted on 6 December 2015. The Committee notes with ***interest*** that pursuant to article 45, paragraph 1, of the amended Constitution everyone has the right to freedom of association, including the right to establish and join trade union organizations.

The Committee further notes the Government's indication that while the issue of amending the Law on Trade Unions will be discussed with the social partners, the right of civilian personnel in the police and security services to join trade unions is not restricted by section 6 of the Law on Trade Unions, by the Law on the Police Service or by the Law on the Service in the National Security Bodies. The Committee notes, however, that it stems from section 45 of the Law on Trade Unions, as amended in 2018, that only those with employment contracts can be members of a trade union and that pursuant to paragraph 3 of the same section, employees of the armed forces, police, national security, prosecutor's office, as well as judges, including judges of the Constitutional Court, cannot be members of a trade union organization. The Committee once again recalls that all workers, without distinction whatsoever, should have the right to establish and join organizations of their own choosing. It further recalls that the only authorized exceptions concern members of the police and the armed forces. It considers, however, that civilians employed in such services should be granted the right to establish and join organizations to further and defend their interests. ***The Committee therefore urges the Government to take the necessary measures to amend the Law on Trade Unions to ensure that employees of the Prosecutor's Office, judges (including of the Constitutional Court), civilians employed by the police and security services, self-employed workers, those working in liberal professions, and workers in the informal economy can establish and join organizations for furthering and defending their interests. It requests the Government to provide information on all progress made in this respect.***

*Minimum membership requirement.* The Committee recalls that it had previously requested the Government to amend section 4 of the Law on Employers' Unions, providing for the number of employers required to form employers' organizations at the national level (over half of employers' organizations operating at the sectoral and territorial levels), sectoral level (over half of employers' organizations operating at the territorial levels) and territorial level (majority of employers in a particular administrative territory or employers' organizations from different sectors in a particular administrative territory); and to also amend section 2 of the Law on Trade Unions, setting out similar prerequisites for federations of trade unions at the territorial, sector and national levels, so as to lower the required minimum membership requirements. The Committee had considered that the minimum membership requirements as set out in the above legislative provisions are too high given that they would appear to ensure that in fact there is only one national level organization, one organization per sector and one territorial level organization per territory or a particular sector in the territory. The Committee notes the Government's indication that the Ministry of Labour and Social Issues has received draft amendments to the Law on Trade Unions and the Law on Employers' Unions. ***Recalling that it has been raising the issue of minimum membership requirement for the last ten years, the Committee expects that, in consultation with the social partners, both the Law on Trade Unions and the Law on Employers' Unions will be amended in the near future so as to lower the minimum membership requirements and to ensure that more than one organization can be established at various levels. The Committee requests the Government to provide information on the developments in this regard.***

*Article 3. Right of organizations to organize their administration and activities in full freedom.* The Committee recalls that it had previously requested the Government to amend:

- sections 13(2)(1) and 14 of the Law on Employers' Unions, which regulate in detail matters that should be decided upon by organizations themselves (such as the obligatory use of the words "employers' union" for all employers' organizations and "Armenia" for a national organization and the rights and responsibilities of the congress of an employers' organization);
- section 74(1) of the Labour Code, which requires a vote by two-thirds of an organization's (enterprise's) employees to declare a strike (or a vote by two thirds of employees of the subdivision if a strike is declared by a subdivision of an organization, as the case may be), so as to ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level; and
- section 77(2) of the Labour Code, according to which, minimum services are determined by the corresponding state and local self-governance entities, so as to ensure that social partners are able to participate in the definition of what constitutes a minimum service.

The Committee takes note of the Government's indication that in its view, sections 13(2)(1) and 14 of the Law on Employers' Unions are not inconsistent with *Article 3* of the Convention and do not limit the right of the employers' unions to independently draft their regulations or by-laws, freely elect their

representatives and organize their administration and activities. ***Recalling that the fundamental notion of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations, the Committee once again requests the Government to consider amending the above-mentioned provisions in consultation with the social partners to ensure that only formal requirements are laid down by the national legislation with regard to the functioning of organizations.***

The Committee further notes the Government's indication that the Labour Code is currently being reviewed to determine whether its above-mentioned sections should be amended. The Government informs, in particular, that it is suggested to amend section 74(1) of the Labour Code so as to require a favourable vote by the majority of employees who have participated in the closed ballot to call a strike if at least two-thirds of the total number of the employees of an organization/undertaking (or its subdivision) have participated in the ballot. The Government indicates that the question of acceptable quorum will be further discussed with the social partners. As regards section 77(2) of the Labour Code, the Committee notes that the Government's indication that a new proposal for amendments contains reference to the negotiation of minimum services between employers and workers' representatives. ***While welcoming the proposed amendments, the Committee recalls that the observance of a quorum of two-thirds of the total number of employees may also be difficult to reach and could restrict the right to strike in practice. It therefore requests the Government to ensure that the quorum and majority required for voting on a strike as well as to call a strike are fixed at a reasonable level. The Committee requests the Government to provide information on the developments regarding the amendment of the Labour Code.***

***The Committee encourages the Government to pursue its efforts in addressing the issues raised above with the assistance of the ILO and in consultation with the social partners.***

## Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2003)

The Committee notes the observations of the Confederation of Trade Unions of Armenia alleging violations of the Convention in practice received on 30 September 2020. ***The Committee requests the Government to provide its comments thereon***.

*Article 4 of the Convention. Collective bargaining*. The Committee had previously noted that pursuant to sections 23, 25, 45, 55 and 56 of the Labour Code, both trade unions and "workers' representatives" enjoyed the right to negotiate collective agreements at the enterprise level. Recalling that direct negotiation between the undertaking and its employees, bypassing representative organizations, where these exist, is detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, the Committee had requested the Government to take the necessary measures to amend its legislation so as to bring it into conformity with the Convention. The Committee notes the Government's explanation that for the purpose of collective bargaining, a trade union is entitled to represent all workers of an undertaking if this union represents over half of the company's workers. A collective agreement signed by that union would apply to all workers of the enterprise in question. If a union represents less than half of all workers of an enterprise, it can only negotiate on behalf of its own members. In the absence of a trade union, the representation functions can be transferred to the relevant regional or sectoral trade union. Pursuant to section 23 of the Labour Code, if no trade union exists at an enterprise, or if the existing unions represent less than half of the employees of the undertaking, the staff meeting may elect other representatives. In the latter case, pursuant to section 56 of the Labour Code, the union which represents less than half of all workers of an enterprise bargains collectively through a joint representative body together with other elected representatives. The Government thus considers that there is no need to amend the Labour Code in this respect. The Committee recalls that, under the terms of the Convention, the right of collective bargaining lies with workers' organizations of whatever level, and that negotiation between employers or their organizations and representatives of non-unionized workers should only be possible when there are no trade unions at the respective level. The Committee emphasizes that where there exists a representative trade union and it is active within the enterprise or branch of activity concerned, the authorization for other workers' representatives to bargain collectively not only weakens the position of the trade union, but also undermines ILO rights and principles on collective bargaining (see the 2012 General Survey on the fundamental Conventions, paragraphs 239–240). The Committee ***regrets*** that despite its numerous requests, section 23 of the Labour Code has not been amended. ***The Committee expects the Government to take immediate action to amend section 23 of the Labour Code and requests it to provide information on any progress made in this regard.***

The Committee had previously noted that according to sections 59(4) and 61(2) of the Labour Code, if an enterprise is restructured or privatized, the collective agreement is considered to be unilaterally terminated, irrespective of its validity period. Recalling that neither the restructuring nor the privatization of an enterprise should in itself automatically result in the extinction of all the obligations resulting from the collective agreement, and that the parties should in any case be in a position to advocate the

application of relevant clauses such as those concerning severance pay, the Committee had requested the Government to amend these provisions accordingly. The Committee notes the Government's indication that in case of a merger of two or more enterprises into one structure, maintaining a collective agreement would not be possible if all of the enterprises concerned had their own collective agreements, as each legal entity can have only one collective agreement. The Committee notes, on the one hand, that the situation described by the Government is only one of many possible situations covered by the above-mentioned provisions of the Labour Code, which deal with restructuring and privatization in general, and on the other, even in the situation referred to by the Government, a merger between two enterprises should not result in workers automatically losing all rights and guaranties obtained through collective bargaining. The Committee thus considers that before a new collective agreement can be negotiated and signed, the previous agreement shall remain in force. ***The Committee therefore reiterates its previous request and asks the Government to provide information on the progress made in this respect.***

*Collective bargaining in practice.* ***The Committee requests the Government to provide information on the number of collective agreements signed and in force in the country and to indicate the sectors and levels concerned as well as the number of workers covered.***

***The Committee reminds the Government that it can avail itself of the technical assistance of the Office.***

## Australia

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

*Articles 2, 3 and 5 of the Convention. Right of workers to form and join organizations of their own choosing without previous authorization and of these organizations to elect their officers, freely organize their activities and formulate their programmes without undue interference.* In its previous comment, the Committee noted the deep and serious concern expressed by the ITUC regarding the attempt by the Government to pass the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 into law, which it considered was contrary to the Convention. Having noted with concern the numerous proposals raised in the Bill which would broaden the possibilities of intervention in the internal functioning of workers' organizations, the Committee had called upon the Government to review the proposals in the Bill with the representative workers' and employers' organizations concerned so as to ensure that any measures adopted were in full conformity with the Convention and to keep it informed in this regard. The Committee notes from the Government's report that, on 26 May 2020, the Prime Minister announced that the Government would not pursue a further vote in the Parliament on the Ensuring Integrity Bill. The Prime Minister indicated that this decision was made in good faith in order to maximise the opportunity for genuine negotiation, compromise and cooperation as part of an industrial relations reform process designed to create jobs and chart a path back to mutually beneficial prosperity following the COVID-19 pandemic. ***The Committee requests the Government to provide information in its future reports on any legislative developments or proposals concerning the industrial relations reform process.***

*Article 3. Right of organizations to freely organize their activities and to formulate their programmes.* In its previous comments, the Committee requested the Government to take all appropriate measures, in consultation with the social partners, to review: (i) the provisions of the Competition and Consumer Act prohibiting secondary boycotts; (ii) sections 423, 424 and 426 of the Fair Work Act (FWA) relating to suspension or termination of protected industrial action in specific circumstances; (iii) sections 30J and 30K of the Crimes Act prohibiting industrial action threatening trade or commerce with other countries or among states; and (iv) boycotts resulting in the obstruction or hindrance of the performance of services by the Government or the transport of goods or persons in international trade; and to provide detailed information on the application of these provisions in practice with a view to bringing them into full conformity with the Convention.

The Committee notes the Government's reiteration that the 2015 reports of all three independent bodies, which had examined the operation of secondary boycott provisions under the Competition and Consumer Act, found that a strong case remained for retaining their prohibition. As regards the Crimes Act, the Committee notes the Government's indication that there have been no referrals for prosecution of an offence contrary to section 30J since the 1980s and that there has only been one prosecution of an offence contrary to section 30K in 1988. The Government therefore does not consider that these offences are being used in a manner contrary to the right of workers' organizations and does not consider that a review of these provisions is necessary at this time.

***While duly noting the absence of prosecution under the Crimes Act in recent times, the Committee, observing the chilling impact that these provisions may nevertheless have on the right of workers' organizations to organize their activities and carry out their programmes in full freedom, once again requests the Government, to continue to keep the above-mentioned provisions under review, in consultation with the social partners, so as to ensure that they are not applied in a manner contrary to***

***this right. It further requests the Government to continue providing detailed information on the application of these provisions in practice.***

In its 2019 report, the Government indicated that it considers the above provisions dealing with industrial action to be necessary, reasonable and proportionate to support the objects of the FWA, which is to provide a balanced framework for cooperative and productive industrial relations that promotes national economic prosperity and social inclusion for all Australians. While protected industrial action is legitimate during bargaining for a proposed enterprise agreement, there may be cases where the impact of that action on the parties or on third parties is so severe that it is in the public interest, or even potentially the interests of those engaging in the action, that the industrial action cease, at least temporarily. The Government adds that a variety of factors must be taken into account when considering an application under section 423 of the FWA and that such applications are rare, with two applications lodged in 2016–17 and one application lodged in 2017–18. As regards section 424, there have been relatively few applications with only nine in 2017–18, in contrast to 579 applications for a protected action ballot order during the same period. Finally, there were only two applications made under section 426 in 2017–18.

The Government indicates that no decisions were made under sections 423 and 426, while it provides some examples of decisions taken by the FWC under section 424 either to suspend or terminate protected industrial action or to refuse to issue such an order. Cases concerning the termination or suspension of industrial action included: (a) terminated action in an oil refinery that would cause significant damage to the Western Australian economy estimated at nearly AUD90 million per day as well as to the Australian economy as a whole; (b) suspension for two months of industrial action by employees of court security and custodial services where the action threatened to endanger the personal safety, health and welfare of part of the population; (c) the suspension in the form of an indefinite ban on a work stoppage in railway transport which threatened to endanger the welfare of a part of the population and threated to cause significant damage to the Sydney economy; and (d) termination of industrial action affecting the Australian Border Force. An application requesting termination of industrial action in independent schools was however refused noting that, while the action was causing "inconvenience", it was "not as yet causing significant harm".

The Committee appreciates the information transmitted by the Government concerning the practical application of these provisions in the FWA. The Committee notes that some of the services concerned in the cases where industrial action was either suspended or terminated (such as border control, court security and custodial services) may be understood to be essential services in the strict sense of the term or public servants exercising activity in the name of the State where strike action may be restricted. The Committee recalls however that it does not consider oil refinery or railway transport to constitute services in which this right may be fully restricted, although the Government may consider the establishment of negotiated minimum services.

***In the light of the above comments, the Committee requests the Government to keep it informed of any steps taken within the framework of the overall industrial relations reform process to review these provisions of the FWA.***

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

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Article 4 of the Convention. Promotion of collective bargaining. Scope of collective bargaining. Fair Work Act (FWA).* In its previous comments, the Committee noted that sections 186(4), 194 and 470–475 of the FWA exclude from collective bargaining as "unlawful terms" any terms relating to the extension of unfair dismissal benefits to workers not yet employed for the statutory period, the provision of strike pay, the payment of bargaining fees to a trade union, and the creation of a union's right to entry for compliance purposes more extensive than under the provisions of the FWA. It had observed the concerns expressed by the Australian Council of Trade Unions (ACTU) with respect to the restrictions in the FWA on the content of agreements and requested the Government to review these sections, in consultation with the social partners, so as to bring them into accordance with the Convention.

The Committee notes that the Government considers these provisions to be appropriate to Australia's national conditions (as permitted by *Article 4*) and that the formulation "matters pertaining to the employment relationship" in section 172(1) in relation to permissible content in enterprise agreements is a long-standing part of Australia's industrial relations framework developed through extensive tripartite negotiation and consultation with the social partners, including the ACTU. The Government adds that the post-implementation review of the FWA by an independent expert panel (the Review Panel) was informed

by submissions from various stakeholders (including the social partners) and supported the FWA content rules. Finally, the Government concludes that the current provisions dealing with permitted matters in enterprise agreements are necessary, reasonable and proportionate to support the objects of the FWA.

***Emphasizing that the measures adapted to the national conditions referred to in Article 4 of the Convention should aim to encourage and promote the full development and utilization of machinery for collective bargaining, and recalling that legislation or measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention, while tripartite discussions for the voluntary preparation of guidelines for collective bargaining are a particularly appropriate method of resolving such difficulties (see the 2012 General Survey on the fundamental Conventions, paragraph 215), the Committee once again requests the Government to review the above-mentioned sections of the FWA, in consultation with the social partners, so as to leave the greatest possible autonomy to the parties in collective bargaining.***

The Committee also notes the supplementary information provided by the State of Queensland that as part of the health workforce response to the COVID-19 pandemic, a set of industrial relations principles and supporting documents were developed in partnership between Queensland Health and the relevant unions. These principles form an overarching employment framework in addition to the existing Certified Agreements and Awards, to allow for the rapid and respectful consultation required to make rapid temporary changes, while ensuring that industrial obligations continue to be met. The principles enshrined a commitment to flexibility on both the part of the employer and staff and ensure that the union rights of entry and right to organize continued to be met throughout the pandemic in a safe manner. The Committee welcomes these efforts to ensure broad-ranged consultation and effective and safe union access to defend workers' interests in the challenging context of the COVID-19 pandemic.

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



## Bahamas

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

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* Noting that the Industrial Relations Act, 2012 (IRA) does not apply to the prison service (section 3), the Committee had previously requested the Government to specify the manner in which prison staff and the relevant organizations enjoy the rights and guarantees enshrined in the Convention. The Committee notes that the Government reiterates that the Bahamas Prison Staff Association allows for prison staff (denominated correctional officers under the national legislation) to have a public platform to address any concern that its members may have, yet also acknowledges that unfortunately prison and correctional officers do not benefit from all the rights and guarantees enshrined within Convention 87 based on their substantial employment position. The Committee recalls that it had previously expressed its concerns with regard to sections 39 and 40 of the Correctional Officers (Code of Conduct) Rules 2014, which limit the rights of association and representation to approved staff organizations on matters related to the conditions and welfare of the officers as a group. The Committee must emphasize that all 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, and that these organizations should enjoy all guarantees under the Convention***. Recalling that the only exceptions from the application of the Convention concern the armed forces and the police, the Committee requests the Government to take the necessary measures – including by revising section 3 of the IRA and the Correctional Officers (Code of Conduct) Rules, 2014 – with a view to ensuring that prison staff enjoy all rights and guarantees under the Convention. The Committee requests the Government to provide information on any developments in this regard.***

*Right of workers and employers to establish organizations without previous authorization.* In its previous comments the Committee noted that under section 8(1)(e) of the IRA, beyond consideration of the specific requirements for registration, the Registrar shall refuse to register a trade union if she/he considers, after applying the rules for the registration of trade unions, that the trade union should not be registered; and that according to section 1 of the First Schedule of the IRA, in applying the rules for the registration of trade unions, the Registrar shall exercise his/her discretion. Thus, the Committee had requested the Government to take the necessary measures to limit the Registrar's powers in relation to the registration of trade unions and employers' organizations. In this respect, the Committee recalls that conferring upon the competent authority a discretionary power to accept or refuse an application for registration can be tantamount in practice to imposing "previous authorization", which is incompatible with Article 2 of the Convention. ***Noting with regret that the Government has provided no information in this regard, the Committee once again requests the Government to revise section 8(1)(e) and the First Schedule of the IRA to ensure that, beyond the verification of formalities, the Registrar has no discretionary powers to refuse the registration of trade unions and employers' organizations.***

*Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules and to elect their representatives in full freedom.* In its previous comments, the Committee had noted that section 20(2) of the IRA – which provides that the secret ballot for election or removal of trade union officers and for amendment of the constitution of trade unions shall be held under the supervision of the Registrar or a designated officer – is contrary to the Convention. The Committee had thus expressed the hope that specific measures would be taken for the amendment of said provision. ***Noting the Government's indication that section 20(2) of the IRA is presently under review by the National Tripartite Council, and recalling that the amendment of the above-mentioned provision is a long-standing issue, the Committee urges the Government to take all the necessary measures to amend section 20(2) of the IRA in the near future with a view to ensuring that trade unions can conduct ballots without interference from the authorities, and requests the Government to provide information on any progress achieved in this regard.***

*Right of organizations to freely organize their activities and to formulate their programmes.* The Committee had previously noted that, when a strike is organized or continued in violation of the provisions concerning the trade disputes procedure, the IRA provides for excessive sanctions, including imprisonment for up to two years (sections 74(3), 75(3), 76(2)(b) and 77(2)). On that occasion it recalled that no penal sanctions should be imposed against a worker for having carried out peaceful strikes and that such sanctions could be envisaged only where, during a strike, violence against persons or property or other serious infringements of rights have been committed. ***Noting that the Government did not provide its observations thereon, the Committee urges the Government to amend the above-mentioned sections of the IRA to ensure that no penal sanctions may be imposed for having carried out a peaceful strike.***

*Article 5. Right to affiliate to an international federation or confederation.* The Committee had previously noted that, under the terms of section 39 of the IRA, it is not lawful for a trade union to be a member of any body constituted or organized outside the Bahamas without a licence from the minister, who has discretionary power in this regard. While having further noted the Government's indication that these approvals are generally granted and do not represent a challenge, the Committee had requested the Government to take measures to align national legislation with such practice and to repeal section 39 of the IRA in order to give full effect to the right of workers' and employers' organizations to affiliate with international organizations of workers and employers. In this respect, the Committee recalls that international solidarity of workers and employers also requires that their national federations and confederations be able to group together and act freely at the international level (see the 2012 General Survey on the fundamental Conventions, paragraph 163). ***Noting the Government's indication that section 39 of the IRA is under review by the National Tripartite Council and recalling that the Committee has been requesting the Government to address this matter since 2006, the Committee firmly expects that the Government will take all the necessary measures to ensure that this section will be repealed in the near future and requests the Government to provide information on any developments in this regard.***

***The Committee reminds the Government that it may avail itself of the technical assistance of the Office and hopes that it will be able to observe progress in the near future.***

***[The Government is asked to reply in full to the present comments in 2021.]***

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

*Article 2 of the Convention. Adequate protection against acts of interference.* In its previous comments, the Committee had requested the Government to take the necessary measures for the adoption of legislative provisions to protect workers' and employers' organizations against acts of interference by each other or each other's agents, accompanied by effective and sufficiently dissuasive sanctions. While noting that the Government acknowledges the concerns of the Committee with regard to the absence of legislative provisions providing for protection against acts of interference, the Committee observes that it does not provide information on the measures envisaged in this regard. ***Recalling that it has been addressing this matter since 2013, the Committee firmly expects that the Government will provide information on the measures taken with a view to giving effect to Article 2 of the Convention without further delay. It requests the Government to provide information on any developments in this regard.***

*Article 4. Representativeness.* In its previous comments, the Committee had noted that section 41 of the Industrial Relations Act (IRA) provides that in order for a trade union to be recognized for bargaining purposes, it must represent at least 50 per cent of workers of the bargaining unit, and recalled that under a system of designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, collective bargaining rights should be granted to all the unions in the unit, jointly or separately, at least on behalf of their own members. While noting that the Government acknowledges the concerns of the Committee in this respect, it notes with ***regret*** that it does not provide any specific information on the measures taken or envisaged in order to align its legislation with the Convention. ***Recalling that it has been raising this issue since 2013, the Committee***

***urges the Government to take all the necessary measures to review the IRA so as to bring it into line with the Convention. It requests the Government to provide information on any developments in this regard.***

*Right of prison guards to bargain collectively.* In its previous comments, the Committee had noted that sections 39 - 40 of the Correctional Officers (Code of Conduct) Rules 2014, allowed the Bahamas Prison Officers Association (BPOA) to make representations to the Commissioner of the Department of Correctional Services in matters relating to the conditions and welfare of officers as a group. Noting that these provisions did not appear to provide collective bargaining rights to the BPOA, the Committee requested the Government to take the necessary steps to ensure that prison guards can fully enjoy the rights and guarantees set out in the Convention. The Committee notes with ***regret*** the Government's indications that the above-mentioned provisions do not provide for the right of collective bargaining to the correctional officers and that there are no legislative discussions regarding the matter. ***Recalling once again that the right to bargain collectively also applies to prison staff, and that the establishment of a simple consultation procedures for public servants who are not engaged in the administration of the State is not sufficient, the Committee firmly expects that the Government will take the necessary measures, including legislative, to ensure that prison guards can fully enjoy the rights and guarantees set out in the Convention and provide information on any developments in this regard.***

*Collective bargaining in practice.* ***The Committee further requests the Government to provide information on the number of collective agreements signed and in force in the country and to indicate the sector and the number of workers covered.***



## Bangladesh

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

The Committee takes note of the supplementary information provided by the Government on 15 September 2020 in response to a complaint pending under article 26 of the ILO Constitution. In light of the decision adopted by the Governing Body at its 338th Session (June 2020), the Committee proceeded with the examination of the application of the Convention on the basis of this supplementary information received from the Government and the observations submitted by the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes that the mentioned complaint under article 26 of the ILO Constitution – alleging non-compliance by Bangladesh with this Convention, as well as the Labour Inspection Convention, 1947 (No. 81), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – is pending before the Governing Body. At its 340th Session (October–November 2020), the Governing Body, in view of the information communicated by the Government on the situation of freedom of association in the country and taking due note both of the Government's commitment to continue to further improve the overall situation and to address the outstanding issues before the supervisory bodies: (i) requested the Government to develop, with the support of the Office and of the secretariat of the Workers' and Employers' groups, and in full consultation with the social partners concerned, a time-bound roadmap of actions with tangible outcomes to address all the outstanding issues mentioned in the complaint submitted under article 26 to the 108th Session of the International Labour Conference (2019); (ii) requested the Government to report on progress made in that regard to the Governing Body at its next session; and (iii) deferred the decision on further action in respect of the complaint until its 341st Session (March 2021).

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019 and 15 September 2020, referring to matters addressed in this comment and alleging violent crackdown on strikes of garment workers, as well as continued retaliation against workers in connection with trade union activities and surveillance of trade unionists by the authorities.

The Committee notes the 2018 amendment of the Bangladesh Labour Act, 2006 (BLA) and the adoption of the 2019 Export Processing Zones Labour Act (ELA).

*Civil liberties.* In its previous comments, the Committee expressed deep concern at the continued violence and intimidation of workers and urged the Government to provide information on the remaining specific allegations of violence and intimidation and to take all necessary measures to prevent such incidents in the future and ensure that, if they occur, they are properly investigated. The Committee further notes the Government's general statement that: any case of grave allegations of violence and intimidation is investigated by the Department of Police or the Ministry of Home Affairs; preventive measures have been put in place, including awareness-raising, training and seminars for police personnel on human and labour rights; and 29 committees have been formed in eight labour-intensive districts, comprised of officials from the Department of Labour (DOL) and the Department of Inspection for Factories and Establishments (DIFE), with the aim of ensuring peaceful and congenial working conditions in ready-made garment (RMG) factories through a number of concrete activities, such as resolving adverse

situations in consultation with workers' and employers' representatives, publicizing the helpline introduced by the DIFE, reporting to the Ministry on the prevailing labour situation, etc. According to the supplementary information provided by the Government, there are also proposals to further increase the manpower of the DIFE with additional 1,698 positions, including senior positions.

The Committee notes, however, with ***concern*** the allegations of violent suppression by the police of several workers' protests in 2018 and 2019 communicated by the ITUC, which denounce the use of rubber bullets, tear gas and water cannons, and the raiding of homes and destruction of property, as a result of which one worker was killed and more than a hundred injured, as well as the filing of false criminal complaints against hundreds of named unionists and thousands of unnamed persons. The Committee notes the Government's detailed reply thereto and observes that no information was provided in respect of: (i) the alleged injuries to 20 rickshaw drivers during suppression of protests in April 2018; (ii) the alleged injuries to 25 jute mill workers after dispersal of two protests in Chittagong in August 2018; (iii) the alleged injuries to ten garment workers during a protest over non-payment of wages in Gazipur in September 2018; and (iv) the alleged repression of export-processing zones (EPZs) workers for attempting to exercise their limited rights permitted under the law. The Committee further notes with ***concern*** the 2020 ITUC allegations referring to: (i) violent crackdowns on strikes in September 2019 and July 2020, resulting in injuries to the workers; (ii) continued anti-union retaliation against garment sector workers, including blacklisting and pending criminal charges against hundreds of workers in connection with the December 2018 and January 2019 minimum wage protests; and (iii) increased pressure and state surveillance of garment federations by a newly-formed unit in the Department of National Security, which resulted in at least 175 trade union leaders and active members being blacklisted and 26 of them facing criminal and civil charges. In this regard, the Committee recalls once again that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations. The Committee notes that the Committee on Freedom of Association has also been examining allegations of mass retaliation, criminalization, continued surveillance and intimidation of workers for trade union activities, with 19 criminal cases pending against more than 520 workers, in relation to the December 2018 and January 2019 minimum wage protests (see 392nd Report, October 2020, Case No. 3263, paragraphs 266–287). ***The Committee requests the Government to provide information on the remaining specific allegations of violence and repression, as well as on the 2020 ITUC allegations, including to report on any investigations or prosecutions initiated and the results thereof.***

***The Committee encourages the Government to continue to provide all necessary training and awareness-raising to the police and other State agents to sensitize them about human and trade union rights with the aim of avoiding the use of excessive force and ensuring full respect for civil liberties during public assemblies and demonstrations, and requests the Government to take all necessary measures to prevent such incidents of violence and repression in the future and ensure that, if they occur, they are properly investigated.***

*Article 2 of the Convention. Right to organize. Registration of trade unions.* In its previous comment, having observed that the number of rejected applications for registration remained high, the Committee requested the Government to continue to take all necessary measures to ensure that the registration process is a simple formality; to provide updated statistics as to the overall number of applications for registration received, accepted and rejected, and to clarify the status of the 509 applications submitted through the online system, which were not granted. The Committee notes the Government's indication that: (i) the Standard Operating Procedures (SOPs) have been incorporated in the 2018 amendment of the BLA as a new section and the concerned officials received training on the subject; (ii) after the adoption of the SOPs, the success rate in union registration has increased from 70 per cent in 2017 before the adoption of the SOPs to 81 per cent after their adoption, 82 per cent in 2018, 73 per cent in 2019 and 86 per cent in 2020 (the overall number of registered trade unions increased from 6,580 in December 2012 to 8,342 in August 2020, whereas the number of trade unions in the RMG sector grew from 132 to 945); (iii) although the rejection rate remains high it can be further reduced through training of concerned DOL officials and workers and, with support from the ILO, effort is being taken in this regard; (iv) if an application for registration is incomplete, the applicant may resubmit it after having complied with the Registrar's observations or appeal to the Labour Court within 30 days; sometimes, instead of taking legal action, the applicants submit repeated applications which can be a cause for repeated rejection; (v) if an application is incomplete due to non-fulfilment of the requirements or lacking information and the concerned parties are not able to meet the objection raised by the Registrar within 15 days, the application will be filed without any action; (vi) there are no cases of arbitrary refusal of registration but applications can be rejected for not meeting one of the requirements set out in the BLA and the decision is communicated to the applicant by registered post; (vii) the time limit for the DOL to register a trade union was reduced from 60 to 55 days and the time limit to communicate any objection to the applicant and for the applicant to reply was reduced from 15 to 12 days (section 182(1), (2) and (4)); (viii) on the basis of 546 applications granted between March 2015 and April 2018, the average time for registration is 45 days; (ix) the provisions for online registration are not yet mandatory according to the BLA and workers require

intensive training on online registration, for which a request has been submitted to the ILO, Dhaka; (x) due to the huge volume of documents that have to be submitted and considering that the online registration is not yet mandatory, the applicants and the service providers follow a combination of the manual and online systems; (xi) due to the upgrading of the software the public database on registration is currently unavailable for a limited period; (xii) once the upgrade is complete, the database will include information on applications for registration accepted and rejected, registration of sectoral and national federations and confederations, trade union-related court cases, conciliation, election of collective bargaining agents, anti-union discrimination and information on participation committees; (xiii) as for the 509 applications for registration referred to previously, they were processed manually; (xiv) trade union registration functions of the DOL have been decentralized and there are now 16 offices mandated to give registration (head office, six divisional labour offices and nine regional labour offices); and (xv) the Government has completed the upgrade of the Directorate of Labour to a Department of Labour, which has resulted in an increase of manpower from 712 to 921, a considerable increase in the DOL budget, and the creation of two additional divisional labour offices.

The Committee takes note of the detailed information provided by the Government and welcomes the increase of manpower of the DOL, as well as the decentralization of registration, which have the potential to increase the rapidity and efficiency of the registration process. The Committee observes however, that despite the Government's efforts to simplify the process and ensure its transparency, registration seems to remain overly complicated, obliging the applicants to comply with stringent conditions and submit numerous documents, leading to the online registration not being fully functional. While duly noting the reported decrease in the rate of rejections of trade union registration applications (from 26 per cent reported in 2019 to 14 per cent reported in 2020), the Committee recalls that this number seems to refer only to the rejection of complete applications and does not include applications which the Registrar deems to be incomplete and which are then filed by the DOL without further action. The Committee also notes in this connection that, according to the ITUC, the registration process remains extremely burdensome, the SOPs fail to prevent arbitrary denial of applications, the Registrar routinely imposes conditions not based in the law or regulations and the Joint Director of Labour retains total discretionary power to refuse registration for false or fabricated reasons. ***In light of the above, while welcoming the decrease in the rate of rejections of trade union registration applications and noting the Government's commitment to a further reduction in the number of rejected trade union applications, the Committee encourages the Government to continue to take all necessary measures to ensure that registration is, both in law and practice, a simple, objective, rapid and transparent process, which does not restrict the right of workers to establish organizations without previous authorization. It encourages the Government to explore, in cooperation with the social partners, concrete ways of simplifying the registration process to make it more user-friendly and accessible to all workers, as well as to provide, where necessary, training to workers on submitting complete and duly documented applications for trade union registration. It also encourages the Government to provide comprehensive training to divisional and regional officers who, following the decentralization of the registration process, are responsible for registration of trade unions, so as to ensure that they have sufficient knowledge and capacities to handle applications for registration rapidly and efficiently. While further noting the technical difficulties currently encountered, the Committee trusts that both the online registration system and the publicly available database will be fully operational in the near future so as to ensure total transparency of the registration process. Regretting that the Government fails to provide full statistics on registration, the Committee requests it once again to provide updated statistics on the overall number of applications submitted, granted, filed and rejected, disaggregated by year and sector.***

*Minimum membership requirements.* In its previous comments, the Committee urged the Government to continue to take the necessary measures to review sections 179(2) and 179(5) of the BLA without delay, in consultation with the social partners, with a view to truly reducing the minimum membership requirement. The Committee notes the Government's indication that: (i) through the 2018 BLA amendment, the minimum membership requirement to form a trade union and maintain its registration has been reduced from 30 to 20 per cent of the total number of workers employed in the establishment in which a union is formed; (ii) since this reduction, a total of 216 trade unions have been registered; (iii) section 179(5) of the BLA which limits the number of trade unions in an establishment or group of establishments to a maximum of three might require some time to amend; and (iv) both issues may be considered at the next revision of the BLA. While welcoming the reduction in the minimum membership requirement, the Committee observes that the 20 per cent threshold is still likely to be excessive, especially in large enterprises, and notes that, according to the ITUC, it does in practice constitute a hurdle for the workforce to organize in large companies. The Committee also observes that a trade union formed in a group of establishments (defined as more than one establishment in a particular area carrying out the same or identical industry) can only be registered if it has as members not less than 30 per cent of the total number of workers employed in all establishments, an excessive requirement that unduly restricts the right of workers to establish sectoral or industry unions. ***The Committee requests the Government to clarify whether, in handling applications for registration, the reduced minimum***

***membership requirement is being applied even in the absence of adjustments to the Bangladesh Labour Rules (BLR) and, should this not be the case, to take the necessary steps without delay to apply these amendments so as to facilitate trade union registration and to indicate the results once it has been applied. The Committee also requests the Government to indicate whether the reduced minimum membership requirement has had any impact on the overall number of trade union registrations submitted and granted, especially in large enterprises. Noting the Government's openness to further reducing the threshold, the Committee expects the Government to engage in meaningful discussions with the social partners in order to: continue to review the BLA with the aim of reducing the minimum membership requirements to a reasonable level, at least for large enterprises and trade unions in a group of establishments; amend section 179(5); and repeal section 190(f) that allows for cancellation of a trade union if its membership falls below the minimum membership requirement.***

With regard to the application of the BLA to workers in the agricultural sector, the Committee notes the Government's indication that the BLA is applicable to workers engaged in commercial agricultural farms where at least five workers are employed – they can participate in trade union activities and collective bargaining – and that small agricultural farms where less than five workers are employed are characterized by low productivity and subsistence farming and generally do not express any interest in trade union activities. While noting the Government's explanation, the Committee recalls that workers in small farms should also be allowed to form or at least join existing trade unions, even if in practice this may not result in a common occurrence. The Committee had also previously requested the Government to clarify, under this Convention and the Right of Association (Agriculture) Convention, 1921 (No. 11), whether Rule 167(4) of the BLR establishes a 400 minimum membership requirement to form an agricultural trade union and to provide information on its effects in practice and its impact on the right of agricultural workers to form trade union organizations of their own choosing. The Committee notes the Government's statement that workers in mechanized farms run for commercial purposes may organize according to the existing provisions of the BLA (the Government provides statistics on the number of existing trade unions in various agricultural sectors) and workers in family-based subsistence farms characterized by few workers can form groups of establishment under Rule 167(4). The Government further explains that Rule 167(4) erroneously referred to the requirement of 400 workers to form a trade union but that this requirement has been redefined through a gazette notification in January 2017. The Rule thus provides an opportunity for workers engaged in field crop production to form a group of establishments in every subdistrict or district, if there are at least five workers in each farm and a minimum of 400 workers unite (there are 18 such entities registered with the Department of Labour). According to the Government, since 77 per cent of the population lives in villages and agriculture represents the main source of livelihood, this membership requirement is not too high. ***Taking due note of the Government's clarification but observing that the requirement of 400 workers to form a group of establishments in one district might still be excessive, especially considering that, in order to reach the 400 threshold, a large number of small family farms would need to unite, the Committee requests the Government to endeavour to reduce this requirement, in consultation with the social partners, to a reasonable level so as not to unduly restrict the right to organize of agricultural workers.***

*Articles 2 and 3. Right to organize, elect officers and carry out activities freely. Bangladesh Labour Act.* In its previous comments, the Committee had urged the Government to take the necessary measures, in consultation with the social partners, to continue to review and amend a number of provisions of the BLA in order to ensure that any restrictions on the exercise of the right to freedom of association are in conformity with the Convention. The Committee notes the detailed information provided on tripartite consultations held before the 2018 BLA amendment, as well as the Government's indication that reform in the labour sector has been a part of national political commitment. The Committee notes with ***satisfaction*** the following modifications introduced in the BLA: addition of section 182(7) instructing the Government to adopt SOPs for the processing of applications for registration of trade unions; repeal of section 184(2)–(4) imposing excessive restrictions on organizing in civil aviation; repeal of section 190(d) allowing cancellation of a trade union due to violation of any of the basic provisions of its constitution; repeal of section 202(22) providing for automatic cancellation of a union if, in an election for determination of collective bargaining agent, it obtains less than 10 per cent of the total votes cast; addition of section 205(12) stating that there is no requirement to form a participation committee in an establishment where there is a trade union; and addition of section 348(A) which provides for the establishment of a Tripartite Consultative Council to provide advice to the Government on matters related to law, policy and labour issues.

The Committee welcomes the clarification that workers in the informal sector do not need to provide identity cards issued by an establishment when unions apply for registration but can also use a national identity card or birth registration certificate (section 178(2)(a)(iii)), as well as the replacement of the obligation to obtain approval from the Government by an obligation to inform the Government of any funds received from any national or international source, except union dues (section 179(1)(d)). The Committee further welcomes the reduction of the requirement of support of two thirds of trade union members to call a strike to 51 per cent (section 211(1)). The Committee also notes that the 2018

amendments introduced section 196(4) providing for the adoption of SOPs for investigating unfair labour practices on the part of the workers and reduced by half the maximum prison sentence imposable on workers for a series of violations – unfair labour practices, instigation and participation in an illegal strike or a go-slow, participation in activities of unregistered trade unions and dual trade union membership (sections 291(2)–(3), 294–296, 299 and 300). However, the Committee observes that the sanctions still include imprisonment for activities that do not justify the severity of the sanction and recalls that it has been requesting the Government to eliminate such penalties from the BLA and to let the penal system address any possible criminal acts.

***Taking due note of the above amendments introduced to improve compliance with the Convention, the Committee expects them to be applied in practice without delay so as to enhance the right to organize of workers and employers and requests the Government to indicate whether they are fully in force and applied or whether their application is dependent upon the issuance of a revised BLR.***

The Committee ***regrets*** that many other additional changes it has been requesting for a number of years have either not been addressed or have been addressed only partially, including some that were previously announced by the Government for amendment. In this regard, the Committee emphasizes once again the need to further review the BLA to ensure its conformity with the Convention regarding the following matters: (i) scope of the law – restrictions on numerous sectors and workers remain, including, among others, Government workers, university teachers and domestic workers (sections 1(4), 2(49) and (65) and 175); (ii) one remaining restriction on organizing in civil aviation (section 184(1) – the provision should clarify that trade unions in civil aviation can be formed irrespective of whether they wish to affiliate with international federations or not); (iii) restrictions on organizing in groups of establishments (sections 179(5) and 183(1)); (iv) restrictions on trade union membership (sections 2(65), 175, 193 and 300); (v) interference in trade union activity, including cancellation of registration for reasons that do not justify the severity of the act (sections 192, 196(2)(b) read in conjunction with 190(1)(c), (e) and (g), 229, 291(2)–(3) and 299); (vi) interference in trade union elections (section 180(1)(a) read in conjunction with section 196(2)(d), and sections 180(b) and 317(4)(d)); (vii) interference in the right to draw up constitutions freely by providing overly detailed instructions (sections 179(1) and 188 (in addition, there seems to be a discrepancy in that section 188 gives the DOL the power to register and, under certain circumstances, refuse to register any amendments to the constitution of a trade union and its Executive Council whereas Rule 174 of the BLR only refers to notification of such changes to the DOL who will issue a new certificate)); (viii) excessive restrictions on the right to strike (sections 211(3)–(4) and (8) and 227(c)) accompanied by severe penalties (sections 196(2)(e), 291(2)–(3) and 294–296); and (ix) excessive preferential rights for collective bargaining agents (sections 202(24)(b), (c) and (e) and 204 (while noting the minor amendments to sections 202 and 204, the Committee notes that they do not address its concerns in that they limit the scope of action of trade unions other than the collective bargaining agents). Furthermore, the Committee previously requested the Government, under Convention No. 11, to indicate whether workers in small farms consisting of less than five workers can, in law and practice, group together with other workers to form a trade union or affiliate to existing workers' organizations (section 1(4)(n) and (p) of the BLA).

***In light of the numerous provisions mentioned above which still need to be amended to bring the BLA fully in line with the Convention, the Committee encourages the Government to engage rapidly with the Tripartite Consultative Council (TCC) referred to in section 348(A) so as to pursue the legislative review of the BLA. It requests the Government to provide information on the composition, mandate and functioning in practice of the TCC and trusts that, in the next revision of the BLA, these comments will be duly taken into account to ensure that its provisions are in full conformity with the Convention.***

*Bangladesh Labour Rules.* In its previous comments, the Committee requested the Government to review a number of BLR provisions to bring them in line with the Convention and trusted that during the revision process its comments would be duly taken into account. The Committee notes the Government's indication that, following the amendment of the BLA, revision of the BLR is a priority action for the Government and a tripartite committee, composed of six representatives of the Government and three representatives of workers and employers each, has already been formed for this purpose and has met on three occasions. Welcoming this information, the Committee emphasizes the need to review the BLR to align it with the 2018 amendments of the BLA, as well as regarding the following matters previously raised: (i) Rule 2(g) and (j) contains a broad definition of administrative and supervisory officers who are excluded from the definition of workers under the BLA and thus from the right to organize; (ii) Rule 85, Schedule IV, sub-rule 1(h) prohibits members of the Safety Committee from initiating or participating in an industrial dispute; Rule 169(4) limits eligibility to a trade union executive committee to permanent workers, which may adversely affect the right of workers' organizations to elect their officers freely; (iii) Rule 188 provides for employer participation in the formation of election committees which conduct the election of worker representatives to participation committees in the absence of a union – this, according to the ITUC, could lead to management domination of participation and safety committees; the Government informs in this respect that election of worker representatives to participation committees without representation of employers is being piloted in two factories; (iv) Rule 190 prohibits certain

categories of workers from voting for worker representatives to participation committees; (v) Rule 202 contains broad restrictions on actions taken by trade unions and participation committees; (vi) Rule 204, which restrictively determines that only subscription-paying workers can vote in a ballot to issue a strike, is not in line with section 211(1) of the BLA which refers to union members; (vii) Rule 350 provides for excessively broad powers of inspection of the Director of Labour; and (viii) the BLR lacks provisions providing appropriate procedures and remedies for unfair labour practice complaints. The Committee further notes, from the supplementary information provided by the Government, that the revision of the BLR, initially expected to be completed by September 2020, will be delayed due to the COVID-19 pandemic. ***While taking note of the challenging context of the current pandemic, the Committee expects the revision process to be concluded without delay so as to ensure that the 2018 BLA amendments introduced to improve compliance with the Convention are reflected in the BLR and its application, and to address other pending issues, as referred to above.***

*Right to organize in EPZs.* In its previous comments, the Committee had requested the Government to continue to revise the draft EPZ Labour Act, 2016 and 2017 in consultation with the social partners, so as to provide equal rights of freedom of association to all workers and bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate. The Committee notes the Government's indication that the draft EPZ Labour Act was formulated after a pragmatic and neutral analysis of the socio-economic conditions of the country and went through a long process of extensive and inclusive consultations and dialogue with all levels of stakeholders, including the ILO. The Government provides detailed information on the consultations that have taken place and informs that the Bangladesh ELA, adopted in February 2019, upholds the rights and privileges of the workers and includes comprehensive changes and measurable progress. The Committee notes with ***satisfaction*** the following amendments made, which address its previous observations: simplification of the formation and registration of workers' welfare associations (WWAs) – the institutional form given to workers' organizations in EPZs – through amendment of a number of provisions of the draft EPZ Labour Act, 2016 and repeal of section 96 establishing an excessive referendum requirement to constitute a WWA; section 16 of the EPZ Workers' Welfare Association and Industrial Relations Act, 2010 (EWWAIRA) prohibiting the establishment of a WWA in a new industrial unit for three months has not been included in the ELA; repeal of section 98 of the draft EPZ Labour Act prohibiting the holding of a new referendum to form a WWA during one year after a failed one; repeal of section 101 authorizing the Zone Authority to form a committee to draft a WWA constitution and to approve it; repeal of section 116 allowing deregistration of a WWA for a number of reasons, including at the request of 30 per cent of eligible workers even if they are not members of the association and prohibiting the establishment of a new association within one year after such deregistration; amendment of section 103(2) to remove the mandatory opening of election of Executive Council members to all workers and not only WWA members; repeal of section 103(5) of the draft EPZ Labour Act, 2017 restricting the right to elect and be elected to the Executive Council to workers who have worked at the enterprise for a specific period; and reduction of the requirement to issue a strike notice from three quarters of members of the Executive Council to two-thirds (section 127(2) of the ELA).

The Committee further welcomes the reduction in the minimum membership requirement to form WWAs but observes that the new requirement of 20 per cent (sections 94(2) and 97(5)) may still be excessive, especially in large enterprises, and considering that only permanent workers may apply to form a WWA. While also welcoming the addition of a provision allowing for the formation of higher-level organizations within a Zone (sections 2(50) and 113), the Committee observes that the conditions to form a federation are excessively strict – more than 50 per cent of WWAs in one Zone must agree to establish a federation – and that a WWA federation cannot affiliate or associate in any manner with another federation in another Zone or beyond the Zone (section 113(3)). ***In view of the above, the Committee requests the Government to provide information on the application in practice of the new amendments, in particular the reduced minimum membership requirement to form WWAs and the possibility to create federations, including to indicate the practical implications of these amendments on the number of applications for WWAs and WWA federations submitted and registered. The Committee trusts that, in order to achieve full compliance with the Convention, the Government will continue, in consultation with the social partners concerned, to endeavour to further reduce, to a reasonable level, the minimum membership requirements to form a WWA, especially in large establishments, as well as federations and to allow WWAs and federations to associate with other entities in the same Zone and outside the Zone in which they were established, including with non-EPZ workers' organizations at different levels.***

While taking due note of the above amendments and of the Government's efforts to address some of its previous observations, the Committee ***deeply regrets*** that most of the changes it requested have not been addressed despite the Government's assurance that it took the Committee's observations into the highest consideration. The Committee, therefore, emphasizes once again the need to further review the ELA to ensure its conformity with the Convention regarding the following matters: (i) scope of the law – specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – sections 2(48)) or from Chapter IX dealing with WWAs (members of the watch and ward or security staff, drivers, confidential assistants, cipher assistants, casual workers, workers employed

by kitchen or food preparation contractors and workers employed in clerical posts (section 93), as well as workers in managerial positions (section 115(2)); (ii) the imposition of association monopoly at enterprise and industrial unit levels (sections 94(6), 97(5) paragraph 2, 100 and 101); (iii) detailed requirements as to the content of a WWA's constitution which go beyond formal and may thus hinder the free establishment of WWAs and constitute interference in the right to draw up constitutions freely (section 96(2)(e) and (o)); (iv) limitative definition of the functions of WWA members despite the deletion of the word "mainly" from section 102(3); (v) prohibition to hold an election to the Executive Council during a period of six months (reduced from one year), if a previous election was ineffective in that less than half of the permanent workers of the enterprise cast a vote (section 103(2)–(3)); (vi) prohibition to function without registration and to collect funds for an unregistered association (section 111); (vii) interference in internal affairs by prohibiting expulsion of certain workers from a WWA (section 147); (viii) broad powers and interference of the Zone Authority in internal WWA affairs by approving funds from an outside source (section 96(3)), approving any amendment in a WWA constitution and Executive Council (section 99), arranging elections to the Executive Council of WWAs (section 103(1)) and approving it (section 104), ruling on the legitimacy of a transfer or termination of a WWA representative (section 121), determining the legitimacy of any WWA and its capacity to act as a collective bargaining agent (section 180(c)) and monitoring any WWA elections (section 191); (ix) interference by the authorities in internal affairs by allowing supervision of the elections to the WWA Executive Council by the Executive Director (Labour Relations) and the Inspector-General (sections 167(2)(b) and 169(2)(e)); (x) restrictions imposed on the ability to vote and on the eligibility of workers to the Executive Council (sections 103(2) and (4) and 107); (xi) legislative determination of the tenure of the Executive Council (section 105); (xii) broad definition of unfair labour practices, which also include persuasion of a worker to join a WWA during working hours or commencement of an illegal strike, and imposition of penal sanctions for their violation (sections 116(2)(a) and (f), 151(2)–(3) and 155–156); (xiii) power of the Conciliator appointed by the Zone Authority to determine the validity of a strike notice, without which a lawful strike cannot take place (section 128(2) read in conjunction with section 145(a)); (xiv) possibility to prohibit strike or lockout after 30 days or at any time if the Executive Chairman is satisfied that the continuance of the strike or lockout causes serious harm to productivity in the Zone or is prejudicial to public interest or national economy (section 131(3)–(4)); (xv) possibility of unilateral referral of a dispute to the EPZ Labour Court which could result in compulsory arbitration (sections 131(3)–(5) and 132, read in conjunction with section 144(1)); (xvi) prohibition of strike or lockout for three years in a newly established enterprise and imposition of obligatory arbitration (section 131(9)); (xvii) possibility of hiring temporary workers during a legal strike in cases where the Executive Chairman of the Zone Authority is satisfied that complete cessation of work is likely to risk causing serious damage to the machinery or installation of the industry (section 115(1)(g)); (xviii) excessive penalties, including imprisonment, for illegal strikes (sections 155 and 156); (xix) prohibition to engage in activities which are not described in the constitution as objectives of the association (section 178(1)); (xx) prohibition to maintain any linkage with any political party or organization affiliated to a political party or non-governmental organization, as well as possible cancellation of such association and prohibition to form a WWA within one year after such cancellation (section 178(2)–(3)); (xxi) cancellation of a WWA registration on grounds which do not appear to justify the severity of the sanction (sections 109(b)–(h), 178(3)); (xxii) limitation of WWA activities to the territorial limits of the enterprise thus banning any engagement with actors outside the enterprise, including for training or communication (section 102(2)) and, subject to the right to form federations under section 113, prohibition to associate or affiliate with another WWA in the same Zone, another Zone or beyond the Zone, including non-EPZ workers' organizations at all levels (section 102(4)); (xxiii) interference in internal affairs of a WWA federation – legislative determination of the duration of a federation (four years) and determination of the procedure of election and other matters by the Zone Authority (section 113); (xxiv) power of the Government to exempt any owner, group of owners, enterprise or group of enterprises, worker or group of workers from any provision of the Act making the rule of law a discretionary right (section 184); (xxv) excessive requirements to form an association of employers (section 114(1)); (xxvi) prohibition of an employer association to associate or affiliate in any manner with another association beyond the Zone (section 114(2)); (xxvii) excessive powers of interference in employers' associations' affairs (section 114(3)); and (xxviii) the possibility for the Zone Authority, with the approval of the Government, to establish regulations (section 204) – these could further restrain the right of workers and their organizations to carry out legitimate trade union activities without interference. The Committee further notes the Government's indication in its supplementary report that a committee will be formed to address the issue of any amendments to the ELA and that the necessary steps will be taken pursuant to its recommendations. The Government also informs that the Zone Authority is open to valuable suggestions, advice and technical assistance from the ILO so as to continue to improve its training programmes and to uplift workers' rights in EPZs. ***Taking due note of the fact that the ELA was adopted in February 2019 and of the Government's commitment to further improve and reform the existing provisions, but observing that an exceptionally large number of provisions still need to be repealed or substantially amended to ensure its conformity with the Convention, the Committee expects that discussion on the revision of the ELA will continue on a more urgent basis in the near future, in consultation with the social partners, so as to address the issues highlighted above (and others that may***

***arise during discussion) in a meaningful manner and provide EPZ workers with all the rights guaranteed in the Convention. The Committee requests the Government to report in detail on progress in this regard.***

The Committee further notes with ***interest*** the Government's indication that the inspection and administration system of EPZs have been brought in line with the BLA (Chapter XIV of the ELA), that section 168 allows the Chief Inspector and other inspectors appointed under the BLA to undertake inspections of EPZs and that several joint inspections have already taken place. The Committee observes, however, that for the DIFE to inspect EPZ establishments, an approval of the Executive Chairman is required and the Chairman retains ultimate supervision of labour standards in EPZs (sections 168(1) and 180(g)), which may hinder the independent nature and proper functioning of labour inspection. The Committee notes the Government's indication that consultations with the workers, investors and relevant stakeholders are ongoing to analyse how best the DIFE may be allied with the existing inspection system in EPZs, to develop an integrated inspection framework and to define the role of the DIFE in the factories in EPZs. ***Referring to its more detailed comments on this point made under Convention No. 81, the Committee encourages the Government to take steps to elaborate the aforementioned inspection framework in order to clarify the powers of the DIFE and the Zone Authority, as well as the functioning in practice of joint inspections or inspections conducted by the Labour Inspectorate of EPZ establishments. The Committee also requests the Government to continue to take further steps to ensure unrestricted access and jurisdiction over labour inspection activities in EPZs for DIFE inspectors.***

Finally, the Committee notes the Government's indication, in its supplementary report, that the situation of the RMG sector, which is dependent on export, is critical as a result of the COVID-19 pandemic. The Government also informs that in order to uphold labour rights, the Ministry of Labour and Employment elaborated a roadmap in consultation with the tripartite partners, but that due to the current pandemic, many of its initiatives destined to be implemented have now been delayed or slowed down, including the labour reform. While taking due note of the impact of the current COVID-19 pandemic on the economy of the country, in particular in the RMG sector, as well as on the Government's efforts to pursue the labour reform, the Committee once again recalls the critical importance which it gives to freedom of association as a fundamental human and enabling right. ***In view of the Government's reiterated commitment to labour reform and to ensuring protection of the rights of workers, the Committee expresses its firm hope that significant progress will be made in the very near future to bring both the legislation and practice into conformity with the Convention. The Committee reminds the Government that it can avail itself of the technical assistance of the Office should it so desire in order to assist the national tripartite dialogue in determining further areas for progress.***

***[The Government is asked to reply in full to the present comments in 2022.]***

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

The Committee takes note of the supplementary information provided by the Government on 15 September 2020 in response to a complaint pending under article 26 of the ILO Constitution. In light of the decision adopted by the Governing Body at its 338th Session (June 2020), the Committee proceeded with the examination of the application of the Convention on the basis of this supplementary information received from the Government and the observations submitted by the social partners this year, as well as on the basis of the information at its disposal in 2019 (see *Articles 1* and *3* below).

The Committee notes that the mentioned complaint under article 26 of the ILO Constitution – alleging non-compliance by Bangladesh with this Convention, as well as the Labour Inspection Convention, 1947 (No. 81) and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – is pending before the Governing Body. At its 340th Session (October-November 2020), the Governing Body, in view of the information communicated by the Government on the situation of freedom of association in the country and taking due note both of the Government's commitment to continue to further improve the overall situation and to address the outstanding issues before the supervisory bodies: (i) requested the Government to develop, with the support of the Office and of the secretariat of the Workers' and Employers' groups, and in full consultation with the social partners concerned, a time-bound roadmap of actions with tangible outcomes to address all the outstanding issues mentioned in the complaint submitted under article 26 to the 108th Session of the International Labour Conference (2019); (ii) requested the Government to report on progress made in that regard to the Governing Body at its next session; and (iii) deferred the decision on further action in respect of the complaint until its 341st Session (March 2021).

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019 and 15 September 2020, referring to matters addressed in this comment and further alleging anti-union dismissal of 3,000 garment workers in June 2020 as part of union busting in three garment factories in Gazipur and Dhaka. ***The Committee requests the Government to provide its comments thereon.***

The Committee notes the 2018 amendment of the Bangladesh Labour Act, 2006 (BLA) and the adoption of the 2019 Export Processing Zones Labour Act (ELA).

*Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination.* In its previous comments, the Committee requested the Government to provide detailed statistics on the number of complaints of anti-union discrimination received by the relevant authorities and their follow-up and to take the necessary measures, after consultation with the social partners, to increase the penalties envisaged for unfair labour practices and acts of anti-union discrimination, and to indicate the outcome of 39 mentioned complaints that gave rise to criminal cases. It also expressed its expectation that the measures taken by the Government would contribute to an expedient, efficient and transparent handling of anti-union discrimination complaints. The Committee notes with ***interest*** the addition of section 196(A) in the BLA explicitly prohibiting anti-union activities by the employer and providing for the establishment of standard operating procedures (SOPs) for investigating such acts. The Committee notes the Government's statement that in case of alleged anti-union activities at enterprise level, it generally intervenes through tripartite consultations, including by setting up dedicated committees for rapid and effective remedial measures, which proved effective in the national industrial relations context, and that in case of serious allegations, there is scope for on-site investigation and referral to the labour courts. It also notes the details provided by the Government on the procedure established under the SOPs to follow up complaints received, which consists of seven stages (written complaint, verification, communication with the employer, investigation, resolution, record with recommendations and referral to labour courts). The Committee further notes the Government's indication that: (i) following the adoption of the SOPs on anti-union discrimination, the handling of complaints has become easier and more transparent and the SOPs are referred to in the 2018 BLA amendment (sections 195(2), 196(4) and 196(A)); (ii) the upgrade of the Directorate of Labour (DOL) to a Department of Labour has been completed, resulting in an increase of manpower from 712 to 921, a considerable increase in the DOL budget, and the creation of two additional divisional labour offices; (iii) the software for the publicly available online database on anti-union discrimination is currently being upgraded and although the process is delayed due to recent reforms within the DOL and the COVID-19 pandemic, the database should be functional soon and once completed, it will include information on anti-union discrimination and unfair labour practices, conciliation, election of collective bargaining agents and information on participation committees; (iv) from 2013 to 2019, 270 complaints regarding anti-union discrimination and unfair labour practices were submitted to the labour office, of which 204 were addressed (52 cases referred to labour courts and 152 disposed of amicably through reinstatement, compensation, memorandums of understanding, arrear wages, etc.) and 66 are undergoing investigation; and (v) of 51 criminal cases referred to labour courts (39 in the previous report), 48 are pending and three were settled – two in favour of the employer and one in favour of the workers. The Committee also notes the details provided by the Government on the type of anti-union practices referred to in the complaints and the remedies applied, as well as information on training and capacity-building activities provided to the concerned stakeholders and workers, including through the workers' resource centre. Taking due note of the information provided, the Committee recalls that the existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice (see the 2012 General Survey on the fundamental Conventions, paragraph 190). ***The Committee requests the Government to continue to provide detailed statistics on the number of complaints of anti-union discrimination received by the relevant authorities and their follow-up, including time taken to resolve the disputes, remedies imposed, the number of complaints settled amicably compared to those referred to labour courts, the results of judicial proceedings and the sanctions ultimately imposed following full proceedings. The Committee encourages the Government to continue to provide the necessary training to labour officials on dealing with anti-union and unfair labour practices complaints with a view to ensuring their efficient and credible handling and to inform about the functioning in practice of the workers' resource centre. While noting the technical challenges encountered, the Committee expects the online database on anti-union complaints to be fully operational in the near future so as to ensure transparency of the process and at the same time ensuring protection of personal data of the workers concerned.***

The Committee ***regrets*** that despite its previous request to increase the penalties envisaged for unfair labour practices and acts of anti-union discrimination by employers, the applicable fines remained unchanged and, as a result, are not sufficiently dissuasive (a fine of maximum 10,000 Bangladeshi taka (BDT) which equals US$120 – section 291(1) of the BLA). The Committee further notes that the penalty of imprisonment has been reduced through the 2018 BLA amendment from two years to one year (section 291(1) of the BLA). ***While noting that the BLA has been recently amended, in order to ensure that acts of anti-union discrimination give rise to a just reparation and sufficiently dissuasive sanctions, the Committee requests the Government once again to take the necessary measures, after consultation with the social partners, to increase the amount of the fine imposable for acts of anti-union discrimination.***

*Helpline for submission of labour-related complaints.* In its previous comment, the Committee requested the Government to continue to provide detailed updates on the functioning of the helpline for

submission of labour-related complaints targeting the ready-made garment (RMG) sector in the Ashulia area and to clarify the status of the 1,567 complaints mentioned that had not been settled. The Committee notes the detailed information provided on the functioning of the helpline: complaints are received through the helpline by a tele consultant group and are then transferred to district offices of the Department of Inspection for Factories and Establishments (DIFE) and investigated by a labour inspector. Mitigation of the complaints is done in three ways: (1) through tripartite meetings (section 124A of the BLA); (2) communication of the complaint to the factory management, who then resolves the issue; or (3) legal action by the DIFE through filing of cases to labour courts. The Government informs that the DIFE received a total of 5,494 complaints between March 2015 and August 2020, of which 5,407 were resolved and 87 complaints are pending, and that the time for resolving the complaints depends on the nature and complexity of the issue. The Committee also notes the Government's indication in its supplementary report that another labour helpline has been introduced by the DIFE to receive complaints from workers and to ensure proper redress, and that this helpline will assist workers and employers in resolving issues regarding wages, retrenchments, gender-based violence and health and safety issues in accordance with the BLA. There are also proposals to further increase the manpower of the DIFE with additional 1,698 positions, including senior positions. ***Taking due note of the information, the Committee requests the Government to clarify the outcome of the 5,407 complaints that have been resolved, to indicate the number or the percentage of complaints specifically related to anti-union practices, and to provide information on whether any steps are taken to ensure anonymity of the complainants so as to prevent reprisals against helpline users. Observing that the RMG helpline has been in service since 2015 and that a new helpline aimed at resolving labour-related issues has been created, the Committee encourages the Government to continue to formally expand these procedures to other geographical areas and industrial sectors, in line with its previously expressed commitment.***

*Allegations of anti-union discrimination following the 2016 Ashulia incident and the 2018-2019 minimum wage protests.* In its previous comment, the Committee requested the Government to ensure that any pending proceedings in relation to the Ashulia incident are concluded without delay, that all workers dismissed for anti-union reasons who wish to return to work are reinstated, and expressed its expectation that measures would be taken to prevent repeated and institutionalized acts of anti-union discrimination. The Committee notes the information provided by the Government that, in relation to the Ashulia incident, all those in custody were immediately released, no worker was imprisoned and after primary investigation, out of ten cases, eight were concluded without framing any charge against any worker and two cases are now pending. The Committee observes that the Committee on Freedom of Association had noted the Government's indication that no worker had been removed for participation in activities related to the Ashulia strike but that a number of workers resigned upon receipt of their due payments and that no contradictory or additional information in this regard has been received from the complainants (see 388th Report, March 2019, Case No. 3263, paragraph 202). With regard to the 2018-2019 minimum wage protests, the Committee notes the Government's indication that while the social partners provided a list of 12,436 workers dismissed from 104 factories, after primary verification by the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA), it was found that 94 factories were involved and 4,489 workers were terminated from 41 factories. The Government clarifies that all terminated workers received benefits according to the existing provisions of the BLA, two factories were found closed, memorandums of understanding were signed between workers' federations and the employer in ten factories and collection of information from 12 factories is in progress. The Committee notes that the Committee on Freedom of Association also observed in relation to the January 2019 demonstrations that several memoranda of understanding had been signed between workers and employers in a number of enterprises providing for the payment of wages and other legal dues to dismissed or suspended workers (see 392nd Report, October 2020, Case No. 3263, paragraph 284). Noting with ***concern*** the massive dismissals of workers following their participation in the 2018-2019 minimum wage protests, the Committee observes that investigations into these allegations do not seem to be conducted by an independent entity but by employers' organizations concerned. ***In view of the above, the Committee requests the Government to clarify its involvement in the ongoing investigations into the massive dismissals of workers following the 2018-2019 minimum wage protests and to provide information on whether an investigation, by an independent entity, has taken place in this regard. The Committee firmly expects that any future investigations into concrete allegations of anti-union discrimination will be done in full independence and impartiality and that the Government will continue to take all necessary measures to prevent repeated and institutionalized acts of anti-union discrimination. Further recalling that in case of dismissal by reason of trade union membership or legitimate trade union activities, reinstatement should be included among the range of measures that can be taken to remedy such a situation and that, if compensation or fines are imposed, these should be sufficiently dissuasive, the Committee requests the Government to provide information on the concrete remedies applied in all cases of termination of workers in the above incidents for which it has been found that they had occurred for anti-union reasons.***

*Case concerning dismissed workers in the mining sector.* In its previous comments, the Committee requested the Government to provide information on the outcome of the judicial proceedings concerning dismissed workers in the mining sector who were charged with illegal activities (case No. 345/2011) once the judgment of the District Sessions Court, Dinajpur has been rendered. Noting the Government's statement that no hearing has yet been held but observing that the case has been pending for several years, the Committee emphasizes the importance of ensuring expeditious examination of allegations of anti-union discrimination so as to ensure adequate protection against such acts in practice. ***The Committee expects the case to be completed rapidly and requests the Government to provide information on its outcome once the judgment of the District Sessions Court, Dinajpur has been rendered.***

*Protection of workers in export-processing zones (EPZs) against acts of anti-union discrimination.* In its previous comment, the Committee requested the Government to provide clarification on several aspects of inspection and hearings conducted by the Bangladesh Export Processing Zones Authority (BEPZA or Zone Authority) and on the application of the RMG helpline to EPZ workers. It requested the Government to establish an online database for anti-union discrimination complaints specific to the EPZs and to continue to provide statistics on anti-union discrimination complaints. The Committee notes the Government's clarification that the RMG helpline established by the DIFE is not applicable to EPZ factories but that there is an individual helpline and independent help desk in eight EPZs where labour-related complaints can be easily submitted, and that the establishment of an online database for workers' complaints is in process. It also notes the detailed information provided on the inspection and monitoring of the working conditions, complaints and grievances of workers by BEPZA, which includes: spontaneous visits to enterprises; possibility to submit anonymous complaints to counsellor-cum-inspectors, industrial relation officers, general manager of the concerned zone or BEPZA executive office which are investigated neutrally; an enquiry option on the BEPZA official website where anyone can drop a message, query or complaint; a complaint box in each EPZ office where workers can drop a complaint and get assistance from the Zone Authority; and the possibility of posting updates and getting information on the social media website. ***Taking due note of the detailed information provided but observing that no statistics were submitted in this regard, the Committee requests the Government once again to provide detailed statistics on the number of anti-union discrimination complaints brought to the competent authorities, their follow-up and the remedies and sanctions imposed.***

The Committee also previously requested the Government to bring the EPZs within the purview of the Ministry of Labour and the Labour Inspectorate. The Committee notes with ***interest*** the Government's indication that the inspection and administration system of EPZs have been brought in line with the BLA (Chapter XIV of the ELA), that section 168 of the ELA allows the Chief Inspector and other inspectors appointed under the BLA to undertake inspections of EPZs and that several joint inspections have already taken place. The Committee refers to its more detailed comments in this regard made under Conventions Nos 81 and 87.

While noting the Government's indication that radical changes have been made to bring the ELA in line with the BLA and improve protection against anti-union discrimination, the Committee observes that, in terms of ensuring adequate protection against acts of anti-union discrimination, there is a further need to continue to review the law to ensure its conformity with the Convention regarding the following matters: specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – sections 2(48)) or from Chapter IX dealing with workers' welfare associations (WWAs), and thus from protection against anti-union discrimination (members of the watch and ward or security staff, drivers, confidential assistants, cipher assistants, casual workers, workers employed by kitchen or food preparation contractors and workers employed in clerical posts (section 93), as well as workers in managerial positions (section 115(2)); broad power of the Executive Chairperson to rule on the legitimacy of a transfer or termination of a WWA representative (section 121(3)-(4)); broad exception to protection against anti-union discrimination (section 121(2) paragraph 2); lack of specific measures to remedy acts of anti-union discrimination except in case of WWA officials covered by section 121; insufficiently dissuasive fines for unfair labour practices – a maximum of US$600 (section 151(1)) and for anti-union discrimination during an industrial dispute – a maximum of US$120 (section 157).The Committee further notes the Government's indication in its supplementary report that a committee will be formed to address the issue of any amendments to the ELA and that the necessary steps will be taken pursuant to its recommendations. The Government also informs that the Zone Authority is open to valuable suggestions, advice and technical assistance from the ILO so as to further improve its training programmes and to uplift workers' rights in the EPZs. ***Taking due note of the fact that the ELA has been adopted in February 2019 but observing that the above provisions need to be further amended to ensure their conformity with the Convention, the Committee expects that the discussion on the revision of the ELA will continue in the near future, in consultation with the social partners, to address the issues highlighted above in a meaningful manner so as to ensure that all workers covered by the Convention are adequately protected against acts of anti-union discrimination. The Committee trusts that the Government will be able to report progress in this regard.***

Finally, the Committee observes with ***concern*** the allegations communicated by the ITUC referring to widespread anti-union practices in the country and illustrated by the dismissal of 36 workers in two EPZ factories in April 2019 following unsuccessful attempts at collective bargaining. ***The Committee requests the Government to provide its reply to these allegations.***

*Articles 2 and 3. Lack of legislative protection against acts of interference in the BLA and the ELA.* The Committee previously emphasized the importance of providing for explicit provisions in the BLA granting full protection against acts of interference. While noting the Government's emphasis on the 2018 BLA amendments and noting that sections 195(1)(g) and 202(13) prohibit employer's interference in the conduct of elections for a collective bargaining agent and Rule 187(2) of the Bangladesh Labour Rules (BLR) prohibits interference in elections of workers' representatives to participation committees, the Committee observes that these provisions do not cover all acts of interference prohibited under *Article 2* of the Convention, such as acts designed to promote the establishment of workers' organizations under the domination of the employer, to support workers' organizations by financial or other means with the objective of placing them under the control of an employer or an employers' organization, to exercise pressure in favour or against any workers' organization, etc. Similarly, while noting that the ELA contains certain provisions prohibiting acts of interference (sections 115(1)(f) and 116(3)), the Committee observes that they do not cover all acts of interference prohibited under *Article 2* of the Convention. ***The Committee therefore requests the Government to take all necessary measures to broaden the current scope of protection against acts of interference in the BLA and the ELA, so as to ensure that workers' and employers' organizations are effectively protected against all acts of interference both in law and in practice. The Committee trusts that, in the meantime, efforts will be made to ensure that, in practice, workers' and employers' organizations will be protected from any acts of interference against each other.***

*Article 4. Promotion of collective bargaining.* The Committee previously requested the Government to inform about the application in practice of section 202A(1) of the BLA providing for assistance from specialists in the context of collective bargaining. The Committee notes the Government's explanation that there is currently no uniform procedure for the use of experts in collective bargaining but that the issue may be considered during the revision of the BLR, that out of nine collective bargaining agreements concluded at the national level and seven at the sectoral level between 2017 and 2019, support of experts was used in five cases and that the assistance of experts facilitates decision-making on collective agreements with confidence.

The Committee also requested the Government to ensure that Rule 4 of the BLR giving the Inspector General total discretion to shape the outcome of service rules and determine their conformity with the law was not used to limit collective bargaining and to provide information on the application in practice of Rule 202, which prohibits certain trade union activities in a way that could impinge on the right to freedom of association and collective bargaining. In relation to Rule 4, the Government informs that the management of factories prepares service rules together with trade unions and in case of any objection, tripartite meetings are arranged to address the objection and only then does the DIFE verify the conformity of the service rules with the law, thus not hampering collective bargaining. It also states that amendment of Rule 202 may be discussed in the next revision of the BLR. ***The Committee encourages the Government to consider amending Rule 202, in consultation with the social partners, during the next revision of the BLR in order to ensure it does not unduly impinge on the right to collective bargaining.***

*Higher-level collective bargaining.* The Committee previously requested the Government to consider amending sections 202 and 203 of the BLA to clearly provide a legal basis for collective bargaining at the industry, sector and national levels and to continue to provide statistics on the number of higher-level collective agreements concluded. While noting the amendments made to section 202 of the BLA, the Committee observes that these do not address its previous concerns about the lack of a legal basis for higher-level collective bargaining. The Committee notes the statistics provided by the Government on the number of collective agreements concluded, the number of workers covered and the sectors to which they relate but observes that these agreements appear to have been concluded at the level of the enterprise and not at sectoral or national levels. It recalls in this regard the need to ensure that collective bargaining is possible at all levels, both at the national level, and at enterprise level; it must also be possible for federations and confederations (see the 2012 General Survey on the fundamental Conventions, paragraph 222). ***In view of the above, the Committee requests the Government to consider, in consultation with the social partners, to further revise sections 202 and 203 of the BLA so as to clearly provide a legal basis for collective bargaining at the industry, sector and national levels. Observing that the information provided by the Government lacks certain elements previously called for, the Committee requests the Government to continue to provide statistics on the number of higher-level collective agreements concluded and in force (at the sectoral and national levels), the sectors concerned and the number of workers covered by these agreements, as well as on any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention.***

*Collective bargaining in the agricultural sector.* The Committee notes the information provided by the Government in reply to the Committee's comments made under the Right of Association (Agriculture)

Convention, 1921 (No. 11), in particular that, through bipartite or tripartite negotiations, trade unions and associations of agricultural workers conclude agreements with employers every three years concerning terms and conditions of work, welfare facilities, insurance, safety, security and other matters. ***The Committee requests the Government to indicate whether statistics are available on the number of collective agreements concluded in the agricultural sector, the type of activity concerned and the number of workers covered, and if so, to provide details in this regard. It also requests the Government to clarify the functioning in practice of tripartite negotiations in this sector.***

*Determination of collective bargaining agents.* In its previous comment, the Committee requested the Government to provide clarification on the exact requirements for a trade union to become a collective bargaining agent. The Committee notes the Government's explanation that there has not yet been a situation where, among several existing unions, no union received the required percentage of votes (one third of the total number of workers employed in the establishment concerned) and recalls that the determination of the threshold of representativeness to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a sector or establishment is compatible with the Convention insofar as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. The Committee wishes to clarify that it is not requesting the Government to remove the one third majority requirement for the acquisition of the exclusive bargaining agent status but recalls that if no union in a specific negotiating unit meets the required threshold of representativeness to be able to negotiate on behalf of all workers, the existing unions should be able to negotiate, jointly or separately, at least on behalf of their own members. ***The Committee therefore requests the Government to clarify whether, in case where no union reaches the required threshold to be recognized as the exclusive collective bargaining agent under section 202 of the BLA, the existing unions are given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members.***

*Promotion of collective bargaining in the EPZs.* In its previous comment, the Committee requested the Government to provide information on any cases where the BEPZA Executive Chairperson rejected the legitimacy of a WWA and its capacity to act as a collective bargaining agent, to take the necessary measures to ensure that the determination of collective bargaining agents in EPZs is the prerogative of an independent body and to continue to provide statistics on the number of collective bargaining agreements concluded. The Committee notes the Government's statement that a WWA registered under the Act in an industrial unit is the collective bargaining agent for that industrial unit (section 119 of the ELA), that there has been no case of rejection of the legitimacy of a WWA and its capacity to act as a collective bargaining agent so far under section 180(c) and that this provision is a safeguard of legitimate WWAs and collective bargaining agents. Taking due note of the explanation, the Committee recalls, however, that the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity. The Government further informs that all 237 elected and registered WWAs are actively performing their activities with full freedom and that during the last five years they had submitted 521 charters of demands, all of which had been negotiated successfully and collective bargaining agreements or memorandums of understanding had been signed. ***Welcoming the Government's commitment to take the necessary measures to maintain yearly statistics in this regard, the Committee requests the Government to continue to provide statistics on the number of collective bargaining agreements concluded and in force in the EPZs, the sectors concerned and the number of workers covered by these agreements, , along with some sample agreements, as well as on any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention. The Committee requests the Government to endeavour to further amend section 180 of the ELA, in consultation with the social partners, to ensure that the determination of collective bargaining agents in EPZs is the prerogative of an independent body, such as the Department of Labour. The Committee also requests the Government to clarify the implications in practice of section 117(2) which does not allow any proceedings before a civil court for the purpose of enforcing or recovering damages for breach of any agreement.***

*Compulsory arbitration in the BLA and the ELA.* The Committee welcomes the Government's indication, in response to its previous request, that the proposed amendment to section 210(10) of the BLA that would enable a conciliator to refer an industrial dispute to an arbitrator even if the parties do not agree was finally not included in the amended BLA. The Committee observes, however, that the ELA allows for unilateral referral of a dispute to the EPZ Labour Court which could result in compulsory arbitration (sections 131(3)–(5) and 132 read in conjunction with section 144(1)). ***Recalling that compulsory arbitration is only acceptable in relation to public servants engaged in the administration of the State (Article 6 of the Convention), or in essential services in the strict sense of the term or in cases of acute national crisis, the Committee expects that, during the next revision of ELA, the Government will address this issue in a meaningful manner, in consultation with the social partners.***

*Articles 4 and 6. Collective bargaining in the public sector.* The Committee previously requested the Government to clarify what specific categories of workers in the public sector can bargain collectively, to

indicate the criteria based on which this right is granted and to provide examples of collective agreements concluded in the public sector. The Committee notes the Government's indication that there are 408 public sector trade unions, including in various sector corporations, city corporations and municipalities, port authorities, secondary and higher secondary education boards, water development boards, energy sectors, various banks and financial institutions, power sectors, jute mills and sugar mills. ***Observing that the Government's reply refers to the right to form trade unions without indicating whether, in the various sectors mentioned, these organizations have the right to undertake collective bargaining, the Committee requests the Government to indicate whether this is indeed the case, and if so, to provide examples of collective bargaining agreements concluded in the public sector.***

The Committee further observes the Government's statement that only staff of autonomous organizations have the right to form trade unions and not the officers, and that neither officers nor staff of public sector organizations other than public autonomous organizations have the right to form trade unions. The Committee recalls in this regard that, in accordance with *Article 6,* only public servants engaged in the administration of the State may be excluded from the scope of the Convention and that a distinction must thus be drawn between, on the one hand, this type of public servants 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 the 2012 General Survey on the fundamental Conventions, paragraph 172). ***The Committee therefore requests the Government to provide a list of public sector services or entities where collective bargaining is not allowed. For those autonomous public sector organizations where collective bargaining is permitted, the Committee requests the Government to indicate the criteria used to distinguish between staff and officers for the purposes of collective bargaining.***

Finally, the Committee notes the Government's indication in its supplementary report that the situation of the RMG sector, which is dependent on export, is critical as a result of the COVID-19 pandemic. The Government also informs that in order to uphold labour rights, the Ministry of Labour and Employment elaborated a roadmap in consultation with the tripartite partners but that due to the current pandemic, many of its initiatives destined to be implemented are now delayed or slowed down, including the labour reform. ***While taking due note of the impact of the current COVID-19 pandemic on the economy of the country, in particular in the RMG sector, as well as on the Government's efforts to pursue the labour reform, the Committee highlights the significant added-value of collective bargaining as a means of achieving balanced and sustainable solutions in times of crisis. The Committee expresses its firm hope that, as soon as feasible, significant progress will be made in the very near future to bring both the legislation and practice into conformity with the Convention and reminds the Government that it can avail itself of the technical assistance of the Office should it so desire in order to assist the national tripartite dialogue in determining further areas for progress.***

## Barbados

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) received on 10 September 2014, concerning matters examined under this comment, as well as other allegations of violations of the Convention in the law. ***The Committee requests the Government to provide its comments in this respect.*** The Committee also takes note of the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature.

The Committee recalls that it has been requesting the Government since 1998 to provide information on developments in the process of reviewing legislation regarding trade union recognition. The Committee notes that the Government indicates that there are no further developments in the process of reviewing legislation regarding trade union recognition, and that a number of the observations made by the ITUC refer to issues concerning trade union registration. ***Hoping that it will be able to observe progress in the near future, the Committee requests the Government to provide information on any development in the legislative review process and it recalls that the Government may avail itself of the technical assistance of the ILO in this regard.***

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

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

# Belarus

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) and of the Belarusian Congress of Democratic Trade Unions (BKDP) received on 16 and 30 September 2020, respectively, and examined by the Committee below together with the Government's reply thereon.

### *Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO*

*Civil liberties and trade union rights*. The Committee notes the ITUC and BKDP allegations of extreme violence to repress peaceful protests and strikes, and detention, imprisonment and torture of workers while in custody following the presidential election in August 2020. The Committee notes that in its report, the Government indicates that the elections held in August 2020 were the most competitive and emotional in terms of public perception and reaction in the history of the State. The Government further indicates that following the vote counting, the political tensions that were fuelled from the outside resulted in a series of protests and events that were organized and held in violation of current legislation and aimed at destabilising the country. The Government points out that the exercise of rights and freedoms, including freedom of assembly, meetings, street processions, demonstrations and picketing, must be peaceful, respect the law of the land and not lead to violations of the law, the rights and legitimate interests of others, and threaten public and national security. The Government further points out that protest actions by some citizens to express their disagreement with the results of the presidential elections were purely political in nature and were organized without regard to the legislation establishing the procedure for their conduct and were not always peaceful. In the course of these actions, numerous offences were recorded; these included acts of resistance to the legitimate demands of law enforcement officers, associated with the manifestation of aggression, use of violence, damage to official transport, blocking the movement of vehicles, damage to infrastructure facilities. The Government indicates that the majority of persons referred to by the BKDP had been held administratively liable for organizing and/or actively participating in illegal protests or calling for participation in such protests. The Government considers that holding persons accountable for illegal acts cannot and should not be regarded as persecution of workers and trade unionists for the exercise of their civil rights and freedoms, including the rights to participate in sanctioned peaceful protests and lawful strikes. The status of a worker or trade union leader does not create additional advantages or immunity.

The Committee observes the statement by the UN High Commissioner for Human Rights at the Intersessional meeting of the Human Rights Council on the situation in Belarus on 4 December 2020, in which she pointed out that the monitoring and analysis of demonstrations since 9 August 2020 indicate that participants were overwhelmingly peaceful. The Committee expresses its ***deep concern*** over the serious allegations submitted by the ITUC and BKDP and the continued deterioration of the situation of human rights in the country, particularly with respect to the right of peaceful assembly, as noted by the UN High Commission for Human Rights at the most recent above-mentioned meeting. The Committee recalls that peaceful participation in strikes or demonstrations should not give rise to arrest or detention. No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike or protest. The Commission recalls the International Labour Conference (ILC) 1970 Resolution concerning trade union rights and their relation to civil liberties, which emphasises that the rights conferred upon workers' and employers' organizations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. Among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal. The Committee refers to Recommendation 8 of the Commission of Inquiry on Belarus, which considered that adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). ***The Committee urges the Government to take all necessary measures to implement this recommendation of the Commission of Inquiry, to prevent the occurrence of human rights violations and ensure full respect for workers' rights and freedoms. The Committee further urges the Government to take measures for the release of all of trade unionists who remain in detention and the dropping of all charges related to participation in peaceful protests and industrial actions. The Committee also requests the Government to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists and to provide a list of the affected persons.***

Regarding the reported cases of violent mistreatment of workers participating in such protests, the Committee, ***deeply regretting*** that the Government provides no information in this regard, recalls that it is the responsibility of the Government to ensure a climate free from violence, threat or pressure against peacefully protesting workers. ***The Committee urges the Government to investigate without delay any***

***alleged instances of intimidation or physical violence through an independent judicial inquiry, in order to shed light on the facts and circumstances surrounding these acts, and to identify those responsible, punish the guilty parties and thus prevent the repetition of similar events. The Committee requests the Government to provide information on all measures taken to this end. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial.***

The Committee recalls that it in its previous comment it noted that activities aimed at giving effect to the recommendations of the Commission of Inquiry continued in the country in collaboration with the ILO. In this respect, the Committee noted that a training course on international labour standards for judges, lawyers and legal educators took place in Minsk in June 2017 and that a tripartite conference "Tripartism and Social Dialogue in the World of Work" was held in Minsk on 27 February 2019. The Committee recalls that it had previously noted that one of the outcomes of a tripartite activity on dispute resolution held in 2016 was the common understanding of the need to continue working together towards building a strong and efficient system of dispute resolution, which could handle labour disputes involving individual, collective and trade union matters. The Committee noted with regret the BKDP's indication that the work on developing such a mechanism has been neglected completely. ***The Committee once again requests the Government to provide its comments thereon and invites it to continue to take advantage of ILO technical assistance in this regard.***

*Article 2 of the Convention. Right to establish workers' organizations*. The Committee recalls that in its previous observations, it had urged the Government to consider, within the framework of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council), the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. The Committee recalls that it requested the Government to provide its comments on the allegations of the BKDP and the ITUC of cases of refusal to register trade union structures of the Free Trade Union of Belarus (SPB) and of the Belarusian Union of Radio and Electronics Workers (REP union) in Orsha and Bobruisk. The Committee notes the Government's indication that the requirement to provide confirmation of legal address is not an obstacle to the registration of trade unions and that there were no cases of refusal to register trade unions or (associations of trade unions in 2019 and the first nine months of 2020. With regard to the refusal to register a REP primary trade union in Bobruisk, the Government confirms that on 5 July 2019, the Bobruisk city executive committee decided to refuse the registration of the primary trade union because its members were not bound by common interests by virtue of the nature of their work as required by section 1 of the Law on Trade Unions. The Government points out that the relevance and the validity of this requirement was confirmed at a meeting of the tripartite Council of 30 April 2009. Thus, according to the Government, the steps taken by the REP union to establish the so-called city primary organization, uniting citizens without association with any organization, industry or profession, did not meet the requirements of the Law on Trade Unions. Additional grounds for the decision to deny registration were the absence of a decision by the authorized trade union body to create an organizational structure and other shortcomings in the documents submitted for the registration. The decision of the Bobruisk city executive committee was not appealed in court. The Committee notes that a similar explanation is provided by the Government regarding the refusal to register a primary trade union in Orsha. The Government points out that a refusal to register does not amount to a ban on the establishment of a trade union or its organizational structure as once all of the shortcomings have been remedied, the documents for the state registration can be resubmitted. The Committee recalls that it had previously taken note of the decision regarding the requirement of section 1 of the Law on Trade Unions, agreed upon by all members of the tripartite Council's sitting of 30 April 2009.

Regarding the Committee's previous request to discuss the issue of registration of trade unions by the tripartite Council, the Committee notes the Government's indication that the possibility of implementing the Committee's proposal may be considered when the tripartite Council resumes its work once the epidemiological situation in the country has improved. The Government points out, however, that the comments of the Committee of Experts are publicly available and that members of the tripartite Council can freely consult them and, if they deem it necessary, put the consideration of the Committee's comments on the agenda of the tripartite Council. The Government reiterates that the agenda for meetings is set on the basis of proposals from the parties and organizations represented on the Council, taking into account the relevance of the issues raised, and with the agreement of the Council's members. To that end, the information should be submitted to the Council's secretariat (the Ministry of Labour and Social Protection) with an explanation as to why that particular issue is problematic and merits consideration by the Council. The Government indicates that in 2016–20, there had been no submissions for discussion of issues relating to the legal address requirement. ***The Committee expects the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings as soon as possible. The Committee requests the Government to inform it of the outcome of the discussion.***

The Committee observes with ***concern*** that during his televised meeting with the chairperson of the Federation of Trade Unions of Belarus (FPB) President Lukashenko urged that trade unions be set up at all private enterprises by the end of 2020 under the threat of liquidation of those private companies which did not organize trade unions upon FPB demand. In his remarks, he underlined the State position supporting the FPB trade unions. The Committee recalls that the principal objective of Convention No. 87 is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution (see the 2012 General Survey on the fundamental Conventions, paragraph 55). The Committee considers that the spirit of Convention No. 87 calls for impartial treatment of all trade union organizations by the authorities, even if they criticize the social or economic policies of national or regional executives, as well as avoidance of reprisals for pursuing legitimate trade union activities. The issuance of a statement by a high public authority that would favour one union over another or even use its authority to create unions within a designated trade union federation undermines the right of workers to establish and join organisations of their own choosing.

The Committee recalls that the 1952 ILC Resolution concerning the independence of the trade union movement emphasizes that a stable, free and independent trade union movement is an essential condition for good industrial relations and that it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes. The Resolution recalls that governments, in seeking the cooperation of trade unions to carry out their economic and social policies, should recognize that the value of this cooperation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuit of political aims, nor should they attempt to interfere with the normal functions of a trade union movement.

***The Committee urges the Government to refrain from showing favouritism towards any given trade union and to put an immediate stop to the interference in the establishment of trade union organizations. The Committee requests the Government to provide information on all measures taken to that end.***

*Articles 3, 5 and 6. Right of workers' organizations, including federations and confederations, to organize their activities. Legislation*. The Committee recalls that the Commission of Inquiry had requested the Government to amend Presidential Decree No. 24 of 28 November 2003 on Receiving and Using Foreign Gratuitous Aid. The Committee further recalls that it had considered that the amendments should be directed at abolishing the sanctions imposed on trade unions (liquidation of an organization) for a single violation of the Decree and at widening the scope of activities for which foreign financial assistance can be used so as to include events organized by trade unions. The Committee recalls that Decree No. 24 had been superseded by Presidential Decree No. 5 of 31 August 2015 on Foreign Gratuitous Aid and the ensuing Regulations on the Procedures for the Receipt, Recording, Registration and Use of Foreign Gratuitous Aid, the Monitoring of its Receipt and Intended Use, and the Registration of Humanitarian Programmes. The Committee notes the Government's indication that the national legislation does not prohibit trade unions from receiving gratuitous foreign aid, including from international trade union organizations. At the same time, the legislation defines the objectives and conditions for the use of foreign gratuitous aid and stipulates that such aid must be registered in accordance with the established procedure, which, according to the Government, is not complicated and rapid. The Government indicates that Decree No. 5 has been replaced by Decree No. 3 of 25 May 2020. The Committee notes with ***regret*** that just as previously under Decrees Nos 24 and 5, the foreign gratuitous aid cannot be used to organize or hold assemblies, rallies, street marches, demonstrations, pickets or strikes, or to produce or distribute campaign materials, hold seminars or carry out other forms of activities aimed at "political and mass propaganda work among the population", and that a single violation of the Regulation bears the sanction of possible liquidation of the organization. The Committee notes the Government's indication in this respect that the ban on receiving and using foreign donations for purposes involving political and mass propaganda work among the population is conditioned by the national security interests, the need to exclude opportunities for destructive influence and pressure from external forces (foreign states, international organizations and associations, foundations, etc.) aimed at destabilising the socio-political and socio-economic situation in the country. The Government emphasizes that this procedure applies to all legal entities, including trade unions, and further points out that there are no cases of trade unions being denied foreign gratuitous aid and that there are no cases of trade unions being liquidated for violation of the procedure for its use. Further in this respect, the Government considers that the issue of procedure established for receiving foreign gratuitous aid is unjustifiably linked to *Articles 5* and *6* of the Convention.

While taking note of the above, the Committee observes that the broad expression "political and mass propaganda work among the population" when applied to trade unions may hinder the exercise of their rights as it is inevitable and sometimes normal for trade unions to take a stand on questions having

political aspects that affect their socio-economic interests, as well as on purely economic or social questions. As to the link with *Articles 5* and *6* of the Convention, the Committee draws the Government's attention to paragraph 624 of the report of the Commission of Inquiry where it was observed that the right recognized in these Articles "implies the right to benefit from the relations that may be established with an international workers' or employers' organization. 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 this right. Although there were no specific allegations as to the practical application of [the] Decree, the Commission reiterates the conclusions made by [the] supervisory bodies that the previous authorization required for foreign gratuitous aid and the restricted use for such aid [...] is incompatible with the right of workers' and employers' organizations to organize their own activities and to benefit from assistance that might be provided by international workers' and employers' organizations".

Further in this connection, the Committee recalls that the Commission of Inquiry had requested the Government to amend the Law on Mass Activities. The Committee recalls that under the Law, which establishes a procedure for mass events, the application to hold an event must be made to the local executive and administrative body. While the decision of that body can be appealed in court, the Law does not set out clear grounds on which a request may be denied. A trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. In this context, "violation" includes a temporary cessation of organizational activity or the disruption of traffic, death or physical injury to one or more individuals, or damage exceeding 10,000 times a value to be established on the date of the event. The Committee had requested the Government to amend the legislation, in particular by abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the Law and setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles.

In its previous observation, the Committee noted the Government's indication that the Law on Mass Activities was amended on 26 January 2019. The Government indicated that the revised Act sets out a number of additional measures and requirements that need to be complied with by the organizers in order to ensure the law and order and public safety during mass events. The Committee noted with deep regret that the Law on Mass Activities was not amended along the lines of its previous requests. It also noted with concern the BKDP's allegation that the amendments to the Law were not discussed with the social partners. The Committee also noted the BKDP's indication that among the novelties in the Law is the notification procedure for street action, which applies to mass events to be organized at "permanent places" designated as such by local authorities. Thus, according to the BKDP, the format of an event is imposed on the organizers, as rallies and pickets are possible in the squares designated as "permanent places", but processions and demonstrations are not. The Committee requested the Government to provide its comments thereon.

The Committee notes the Government's indication that because a violation of the procedure for organizing and/or holding a mass event may entail a serious threat to public order, the national legislation establishes certain liability, including liquidation of an organization for a single violation if the mass event results in serious damage or substantial harm to the rights and legal interests of other citizens and organizations. The Government points out that the above should not be interpreted as a deterrent to the exercise by citizens and trade unions of their right to freedom of peaceful assembly. The Government adds that the decision to terminate activities of an organization may only be taken by the Supreme Court. The Government indicates that to date, there have been no decisions on the liquidation of trade unions for violation of the procedure for organizing and conducting mass events.

With regard to the information provided by the BKDP that the introduction of notification procedures for the organization and holding of mass events in permanent locations imposes on the organizers the format of the event, the Government indicates that the organizers have the right to determine the format of the planned event themselves. Thus, if the planned format allows the event to be held in one of the specially designated permanent locations, the organizers may use the notification procedure, if not - the organizers need to receive a permission to hold the mass event. The above is aimed not at restricting the organizers in choosing the format of the event, but rather at eliminating excessive interference of state bodies in the process and thus at creating additional guarantees for the realization by citizens of the right to assembly. At the same time, certain restrictions on individual rights and freedoms are a means of legal protection of public order and public safety, morality, public health and the rights and freedoms of other persons. Thus, the Government considers that the legislation in force is in conformity with the principles of freedom of association and freedom of assembly.

While taking note of the above, the Committee recalls that it had previously noted with regret the adoption by the Council of Ministers (pursuant to the Law on Mass Activities) of the Regulation on the

procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event (Ordinance No. 49, which entered into force on 26 January 2019). The Committee noted that according to the Regulation, once a mass event is authorized, the organizer must conclude contracts with the relevant territory internal affairs bodies, health services facilities and cleaning facilities regarding, respectively, protection of public order, medical and cleaning services. The Regulation provides for the fees in relation to protection of public services as follows: three base units – for an event with the participation of up to ten people; 25 base units – for an event with the participation of 11 to 100 people; 150 base units – for an event with the participation of 101 to 1,000 people; 250 base units – for an event with the participation of more than 1,000 people. The Committee notes that the current base unit is set at BYN27 (US$11). If the event is to take place in an area which is not a "permanent designated area," the above fees are to be multiplied by a coefficient of 1.5. In addition to the above fees, the Regulation provides for the expenses of the specialized bodies (medical and cleaning services) that must be paid by the organizer of the event. According to the Regulation, these shall include: salary of employees engaged in the provision of services taking into account their category, number and time spent in the mass event; mandatory insurance contributions; the cost of supplies and materials, including medicine, medical products, detergents; indirect expenses of specialized bodies; taxes, fees, other obligatory payments to the republican and local budgets provided by law. The Committee notes with ***deep regret*** that the Regulation was amended on 3 April 2020 by the Ordinance of the Council of Ministers No. 196 so as to provide that the above-mentioned various contracts have to be concluded by an organizer prior to filing a request for authorization to hold an event. The Committee notes with ***deep concern*** that according to the most recent observations of the BKDP, the new amendment deprives trade unions of the possibility to carry out their public activities.

Reading these provisions alongside those forbidding the use of foreign gratuitous aid for the conduct of mass events, the Committee considers that the capacity for carrying out mass actions would appear to be extremely limited if not non-existent in practice. The Committee notes with ***regret*** that at this stage, the Government considers it not advisable to change the existing procedure for receiving and using foreign gratuitous aid. ***The Committee therefore once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and the accompanying Regulation in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. The Committee recalls that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used. Furthermore, considering that the right to organize public meetings and demonstrations constitutes an important aspect of trade union rights, the Committee requests the Government to take the necessary steps in order to repeal the Ordinance of the Council of Ministers No. 49, as amended, which makes the exercise of this right nearly impossible in practice. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.***

*Practice.* The Committee recalls that it has been noting the allegations of repeated refusals to authorize the BKDP, the BNP and the REP union to hold demonstrations and public meetings for a number of years and in this respect, it had previously urged the Government, in working together with the above-mentioned organizations, to investigate all cases of refusals to authorize the holding of demonstrations and meetings, and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations and meetings to defend their occupational interests. In this respect, the Committee had noted that according to the Government, in 2016–19, the following were the most common reasons to deny an authorization to hold a mass event: the application did not contain the information required by the law; another mass event was being held in the same place at the same time; the event was to take place in a location not allowed for such a purpose; the documents submitted did not indicate the precise location of the event; and the event was announced in the mass media prior to receiving authorization. The Government indicated that when a permission to hold a mass event was not granted, the organizers, having rectified the shortcomings, could re-submit their application. Finally, a decision prohibiting the holding of a mass event may be appealed in court. The Government referred to several examples where the permission to hold such events was granted to the BKDP. While taking note of this information, the Committee noted the 2019 BKDP's allegations that executive authorities in Minsk, Mogilev, Vitebsk, Zhlobin, Borisov, Gomel, Brest and Novopolotsk refused to grant a permission to hold mass events and requested the Government to provide its detailed comments thereon. The Committee notes the Government's indication that the decision to allow or prohibit a mass event is made taking into account the date, place, time, number of participants, weather conditions and a number of other circumstances directly affecting public order and safety and that both the rights of citizens to freedom of association and freedom of assembly and the principle of the priority of the public interest, according to which, the exercise of rights should not undermine public benefit and safety, damage the environment, historical and cultural values, and infringe on the rights and interests of other persons, are taken into

account. The Committee further notes the detailed information provided by the Government in reply to the 2019 BKDP allegations. The Committee notes, in particular, that with the exception of one case where a permission to hold a mass event was granted, others were denied on account of the following: the event was to take place in a location not allowed for such a purpose; the failure to provide information on the source of funding and information on contracts for medical care and cleaning of the territory; the application did not contain the information required by the law; and another mass event was being held in the same place at the same time. The Committee observes from the information provided by the Government that it would indeed appear that the application of the legislation in practice hinders the right of workers to carry out their activities without interference. ***In view of the continuing difficulties experienced by the BKDP unions, the Committee urges the Government to engage with the social partners, including in the framework of the tripartite Council, with a view to addressing and finding practical solutions to the concerns raised by the unions in respect of organizing and holding mass events. The Committee requests the Government to provide information on concrete steps taken in this respect and the outcome of such discussions. The Committee further requests the Government to provide statistical information on the requests submitted and permissions granted and denied, segregated by the trade union centre affiliation.***

The Committee recalls the 2019 BKDP and ITUC allegations regarding the cases of Messrs Fedynich and Komlik, leaders of the REP union, found guilty, in 2018, of tax evasion and use of foreign funds without officially registering them with the authorities as per the legislation in force. They were sentenced to four years of suspended imprisonment, restriction of movement, a ban on holding senior positions for five years and a fine of BYN47,560 (over US$22,500 at that time). The Committee noted that the particulars of these cases were being considered by the Committee on Freedom of Association in the framework of its examination of the measures taken by the Government to implement the recommendations of the Commission of Inquiry. In this connection, the Committee also noted the BKDP allegation that the equipment seized during searches in the REP union and BNP premises had not been returned and requested the Government to provide information thereon.

The Committee notes the Government's indication that according to the Investigative Committee, computer equipment, mobile phones and other equipment seized during searches of the REP union and BNP administrative premises were returned to their official representatives in October 2019, except for the hard drives and flash drives containing information on financial and economic transactions of these organizations. The data storage devices have not been returned and are kept together with the corresponding material in the criminal case of tax evasion by the leaders of the REP union Messrs Fedynich and Komlik. The Government indicates that the information contained therein will be used to conduct further investigations into possible similar crimes committed by these persons in the period from 2012 to 2018 with the assistance of the BNP employees. In this connection, the Minsk City Investigation Committee Department has appointed an additional tax audit of the REP union, which is yet to be initiated. Upon the completion of the tax audit, the leading criminal authority will take a decision on the future fate of the seized information storage devices. While noting this information, the Committee observes that the data contained in the storage devices could have been copied and returned to the union thereby avoiding the situation where a union is deprived of administrative and financial information necessary for the conduct of its activities. ***The Committee requests the Government to provide information on the outcome of a new investigation.***

*Right to strike*. The Committee recalls that it had been requesting the Government for a number of years to amend the following sections of the Labour Code as regards the exercise of the right to strike: sections 388(3) and 393, so as to ensure that no legislative limitations can be imposed on the peaceful exercise of the right to strike in the interest of rights and freedoms of other persons (except for cases of acute national crisis, or for public servants exercising authority in the name of the state, or essential services in the strict sense of the term, i.e. only those, the interruption of which, would endanger the life, personal safety or health of the whole or part of the population); 388(4) so as to ensure that national workers' organizations may receive assistance, including financial assistance, from international workers' organizations, even when the purpose is to assist in the exercise of freely chosen industrial action; 390, by repealing the requirement of the notification of strike duration; and 392, so as to ensure that the final determination concerning the minimum service to be provided in the event of disagreement between the parties is made by an independent body and to further ensure that minimum services are not required in all undertakings but only in essential services, public services of fundamental importance, situations in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population, or to ensure the safe operation of necessary facilities.

The Committee notes the Government's indication that the right to strike is not expressly provided for in the Instrument of the ILO; rather, the ILO supervisory bodies derive the right to strike from *Article 3* of Convention No. 87, despite the fact that the legality of this interpretation has been questioned by the Employers' Group on several occasions and that under Article 37 of the ILO Constitution, any question or dispute concerning the interpretation of conventions shall be referred to the International Court of Justice,

the only body which has the right to interpret Conventions. The Committee further notes that the Government refers to the national constitutional and legislative provisions enshrining the right to strike. It further notes the Government's indication that the exercise of the right to strike requires the existence of a collective labour dispute and that national legislation does not provide for the possibility of organizing and holding political strikes. The law may impose restrictions on the exercise of the right to strike to the extent necessary in the interests of the national security, public order, public health and the rights and freedoms of others. The Government points out that pursuant to section 393 of the Labour Code, in the event of a real threat to national security, public order, public health, the rights and freedoms of other persons and in other cases provided for by law, the President of the Republic of Belarus has the right to postpone or suspend a strike, but not for more than three months. The Government further points out that legal provisions containing certain restrictions or conditions on the exercise of the right to strike are due to the very nature of the right. According to the Government, the right to strike is fundamentally different from other human rights due to a number of specific following features: it is not an end in itself, but a tool to achieve an end, a way to protect the interests of workers; the right to strike is not inherent and inalienable as it may be restricted; it must be balanced with the rights of other human rights when the health and safety of others are affected or essential services are impacted; and while it is an individual right, the possibility of its realization depends on the agreement of other parties. For the reasons expressed above, the Government disagrees with the calls of the Committee for the amendment of the legislation, in particular as regards section 388(4) of the Labour Code.

At the outset and in reply to the Government's general remarks, the Committee recalls that its opinions and recommendations derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions**.** It is within this mandate that it has been dealing with the questions pertaining to the right to strike.

***The Committee requests the Government to take measures to revise the above-mentioned legislative provisions, which negatively affect the right of workers' organizations to organize their activities in full freedom, in consultation with the social partners, and to provide information on all measures taken or envisaged to that end.***

The Committee recalls that it had previously requested the Government to provide its reply to the BKDP allegations of violation of the right to strike in practice**.** The Committee notes the Government's indication that a strike is a measure of last resort to which workers represented by a trade union have the right to resort if all other constructive ways of resolving a collective labour dispute (conciliation, mediation and arbitration) have been exhausted. The Government points out that the need to comply with the procedure for resolving collective labour disputes should not be considered as a practice contradicting provisions of the Convention regarding the right of workers' organizations to freely exercise their activities. The Committee notes with ***regret*** that while the Government confirms that the decision by members of the SPB at an enterprise in Polotsk to call a rolling strike from 1 November to 31 December 2017 was declared illegal by the court, it does not indicate the reasons therefor.

The Committee notes with ***concern*** detailed allegations of numerous cases of arrests, detention of and fines imposed on trade unionists for having organized and participated in strikes following the August 2020 events. The Committee notes the Government's indication that attempts to organize strikes at various enterprises were in no way connected with the resolution of collective labour disputes, as per the requirement set by the Labour Code; rather the purpose of these protests was to draw public attention to the civil position and political demands of some employees against the country's leadership, without due regard to the interests of other members of the workforce who do not share the same political views, as well as the economic interests of enterprises and of the State. The Committee notes that pursuant to the definition of the word "strike" set out in section 388 (1) of the Labour Code, as referred to by the Government, strikes are permitted only in relation to a collective labour dispute. The Committee considers that strikes relating to the Government's economic and social policies, including general strikes, are legitimate and therefore should not be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use, respectively, strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members. Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the

framework of legitimate trade union activities, including in cases when such organizations have recourse to strikes (see the 2012 General Survey on the fundamental Conventions, paragraph 124). ***The Committee therefore further requests the Government to amend section 388(1) of the Labour Code, in consultation with the social partners, to ensure that workers can exercise their right to strike to defend their occupational and economic interests, which do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. The Committee requests the Government to indicate all measures taken or envisaged to that end.***

*Consultations with the organizations of workers and employers*. The Committee recalls that in its previous comment it had noted that the BKDP alleged lack of consultations in respect of the adoption of new pieces of legislation affecting rights and interest of workers. The Committee notes in this respect the Government's indication that the development of draft legislation regulating social and labour issues is carried out with the direct involvement of the social partners. The obligation to consult the social partners and the procedure therefor are reflected in the tripartite General Agreement for 2019-21. In addition, and as a follow-up to the Law "On Normative Legal Acts", a Regulation on the Procedure for Public Discussion of Draft Normative Legal Acts was approved by the Council of Ministers on 28 January 2019. The Regulation describes the procedures and means of public consultation with regard to legislative drafts. Furthermore, pursuant to Regulation of the Council of Ministers No. 193 of 14 February 2009, draft legislation affecting labour and socio-economic rights and interests of citizens is submitted to the FPB as the most representative organization of workers for possible comments and/or proposals. In addition, both the FPB and the BKDP are represented in the National Council on Labour and Social Issues (NCLSI), as well as in the tripartite Council. Both tripartite advisory bodies have certain functions with regard to draft legislation affecting social and labour issues. The Government indicates that it had consulted with trade unions and employers' organizations with regard to the amendments to the Labour Code and that discussions in this regard were held at meetings of the NCLSI held on 28 June 2018 and 31 May 2019.

While taking note of this information, the Committee understands that the FPB, as an organization with a higher overall number of members, has preferential rights in the processes of consultation on legislation affecting rights and interest of workers. The Committee considers that both the number of members and independence from the authorities and employers' organizations are essential elements for consideration in determining the representativeness of an organization. In light of the above-noted publicly expressed support by the State authorities at the highest level for the FPB, the Committee is bound to reiterate its previous comments made in 2007, which recalled the importance of ensuring an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country before establishing the notion of representativeness. ***The Committee therefore requests the Government to ensure that the BKDP and the FPB, as members of both the NCLSI and the tripartite Council, enjoy equal rights in consultations during the preparation of legislation and to that end to take the necessary measures to amend Regulation of the Council of Ministers No. 193. The Committee requests the Government to provide information on all steps taken in this regard. The Committee further once again requests the Government to take the necessary measures in order to further strengthen the role of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which should, as its title indicates, serve as a platform where consultations on the legislation affecting rights and interests of the social partners can take place.***

Further in this respect, the Committee notes the Government's indication that the tripartite Council was set up with the advice of the ILO to consider issues related to the implementation of the recommendations of the Commission of Inquiry as well as other issues that may arise between the Government and its social partners, including the consideration of complaints received from trade unions. The Committee welcomes the Government's expressed readiness to either work to further improve the Council's function or to create another structure. The Committee also notes that the Government also expresses its concern over the issue of representation at the Council and the willingness of the parties to accept the decisions that will be made within this tripartite body. The Government indicates, in particular, that in its experience, representatives of the BKDP are not prepared to support Council's decisions that differ from the BKDP predetermined position or declare that they do not have the necessary authority to adopt a position of the Council. The Government indicates that it would like to count on the advice of the Office in this respect once the Council resumes its work, which has been temporarily suspended due to the epidemiological situation caused by the widespread of COVID-19. ***Taking all the above into account, the Committee expects that the Government will fully engage with the social partners, the ILO, as well as relevant national institutions and bodies, with a view to improving the functioning, procedures and the work of the tripartite Council aimed at enhancing its impact in addressing the issues stemming from the recommendations of the Commission of Inquiry and other ILO supervisory bodies.***

The Committee considers that the current situation in Belarus remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention. The Committee ***regrets*** to observe that the recent developments as examined above appear to indicate steps backward on some

of the previously achieved progress in implementing the Commission of Inquiry's recommendations. ***The Committee therefore urges the Government to pursue its efforts and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay.***

***In light of the situation described, the Committee is obliged to note that there has been no meaningful progress towards full implementation of the 2004 Commission of Inquiry recommendations, and notes with concern that the recent developments referred to in detail above would appear to indicate a retreat on the part of the Government from its obligations under the Convention.***

***[The Government is asked to supply full particulars to the Conference at its 109th Session and to reply in full to the present comments in 2021.]***

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

The Committee notes of the observations of the International Trade Union Confederation (ITUC) and of the Belarusian Congress of Democratic Trade Unions (BKDP) received on 16 and 30 September 2020, respectively. The Committee notes that these organizations allege acts of anti-union discrimination, through non-renewal of employment contracts, and interference in trade union internal affairs, through either non-recognition of primary trade unions established at the enterprise level or pressure exercised on workers to leave the union. ***The Committee requests the Government to provide its comments thereon.***

The Committee further notes the BKDP indication that it was not part of the working group established to prepare changes to the General Agreement in force (2019-21), in light of the amendment of the Labour Code, which entered into force in January 2020. Referring to the amendment of section 365 of the Labour Code, which now makes a distinction between clauses of a collective agreement that apply to all workers and those that could apply only to those workers who are members of a trade union, which had negotiated and signed a collective agreement, the BKDP indicates that this reform unduly favours the Federation of Trade Unions of Belarus (FPB) to the detriment of independent unions. The Committee notes that in its report on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Government indicates that the BKDP assertion that its representatives were not invited to participate in the preparation of amendments to the General Agreement are not true. The Government explains that, following the decision of the National Council on Labour and Social Issues of 5 February 2020, the Ministry of Labour and Social Protection began preparing draft amendments to the 2019–21 tripartite General Agreement. To that end, on 12 February 2020, it sent a letter to the BKDP requesting it to: (1) nominate its representative to the working group for the preparation of the draft amendments to the General Agreement; and (2) provide proposed drafts amendments, which take into account the amendment to section 365 of the Labour Code. According to the Government, while the BKDP nominated its representative, it did not submit any proposals; it was nevertheless informed of the proposals made by other members of the working group, which basically involved clarification of certain terms used in the General Agreement, taking into account the amendments made to the Labour Code.

Regarding the amendment of section 365 of the Labour Code, which deals with the scope of collective agreements, the Committee notes the Government's explanation that the amendment aimed at eliminating legal uncertainty that arose in practice. The Government explains in this regard that under the previous section 365, provisions of a collective agreement applied to all employees, including those who are not members of the trade union party to a collective agreement. The practice has nevertheless developed when at some undertakings, the collective agreement was applied to all employees and in others – only to employees who are trade union members. The main innovation of the amended section of the Labour Code is that it now clearly defines the provisions of the collective agreement, which must be applied to all employees, regardless of whether they are members of a trade union or not. These include the most important norms that define working conditions: working and rest hours, internal labour regulations, labour standards, wages, procedure for wage indexation, labour safety, guarantees and compensations provided in accordance with the law. Provisions of a collective agreement regulating other matters will apply to employees who are not members of the trade union if they agree to this in writing. Should a collective agreement provide other procedure for the application of provisions regulating other than the most important norms, the procedure provided for in the collective agreement will apply. The Governments considers that there are no elements of discrimination in this approach. While taking note of this explanation, the Committee recalls that for a number of years, in accordance with the recommendations of the Commission of Inquiry and the Committee on Freedom of Association, it has maintained a dialogue with the Government with a view to encourage it to put an end to various measures, taken in law and in practice, to eliminate independent trade union organizations and obstruct trade union pluralism. The Committee refers to its observation on the application of Convention No. 87 where it noted that the FPB, the largest workers' organization in the country, enjoys full support of the State. Taking into account the situation of trade union rights in Belarus and observing that the FPB is a signatory to almost all collective agreements in force, the Committee questions the impact that the amendment of section

365 of the Labour Code could have in practice on the freedom of workers to join trade unions not belonging to the FPB structures, including for the purpose of collective bargaining. ***The Committee requests the Government to bring the issue of application of this provision in practice to the attention of the tripartite Council and to provide information on the outcome of the discussion in its next report.***

Not having received other supplementary information, the Committee, noting with ***concern*** the above allegations, which could indicate a fall back on some of the previously achieved progress, as highlighted under *Article 4* of the comments below, reiterates its comments adopted in 2019 and reproduced below taking into account certain new information provided by the Government in its 2020 report on the application of Convention No. 87 (see *Article 4*).

### *Follow-up to the 2004 recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO*

The Committee notes of the observations of the BKDP received on 30 August 2019 and alleging violations of the Convention in practice. The Committee examines them below.

The Committee notes the 385th and the 390th reports of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.

*Articles 1–3 of the Convention. Adequate protection against acts of anti-union discrimination and interference.* The Committee recalls that it had previously requested the Government to reply to the BKDP observations containing allegations of dismissals of trade unionists Ms Oksana Kernozhitskaya and Mr Mikhail Soshko. The Committee notes the Government's indication that these workers were not dismissed, rather, their contract of employment has expired. The Government explains that the termination of employment upon the expiry of a fixed-term employment contract cannot be considered dismissal by the employer. The Government further explains that under the law, the employer is not obliged to justify his or her unwillingness to extend an employment relationship upon the expiry of a contract. Thus, according to the Government, the expiry of a contract is already in itself sufficient grounds for its termination; there are no legal means of compelling an employer to conclude a new contract with a worker. The Committee considers that the legal framework as described by the Government does not currently provide for an adequate protection against non-renewal of a contract for anti-union reasons. It recalls in this respect that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of *Article 1* of the Convention. It also recalls that since inadequate safeguards against acts of anti-union discrimination, including against non-renewal of contracts for anti-union reasons, may lead to the actual disappearance of primary level trade unions, composed only of workers in an undertaking, additional measures should be taken to ensure fuller protection for leaders and members of trade unions, against any such acts. As one of the additional measures to ensure the effective protection against anti-union discrimination, the adoption of provision for laying upon the employer, in the case of any alleged discriminatory dismissal or non-renewal of contract, the burden of proving that such action was in fact justified. ***The Committee requests the Government to take, in consultation with the social partners, the necessary measures in order to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end.***

The Committee recalls that it had also noted the BKDP allegation that the management of the Belaruskali promoted the primary trade union affiliated to the FPB at the expense of the BKDP-affiliated union and pressured the members of the latter to leave the union. The Committee notes the Government's explanation that primary organizations of trade unions in Belarus are affiliated to either the FPB or the BKDP. A number of enterprises have several primary trade union organizations. At Belaruskali, there are two primary trade union organizations: the primary organization of the Belarusian Union of Chemical, Mining and Oil Industries Workers (Belkhimprofsoyuz), affiliated to the FPB, and the Independent Trade Union of Miners (NPG) of Belaruskali, which is a primary organization of the Belarusian Independent Trade Union (BNP), affiliated to the BKDP. The presence in one enterprise of the organizational structures of two different trade unions naturally gives rise to competition for members. The trade unions use various methods and means to strengthen their own position, retain existing members and attract new ones. As provisions of Belkhimprofsoyuz' by-laws do not permit simultaneous membership in two trade unions, the trade union committee of the Belkhimprofsoyuz primary trade union organization at the undertaking decided to bring its structure into line with the existing rules and to take steps to eliminate dual trade union membership. To that end, it proposed to workers with dual membership (690 workers) to choose between the two unions. According to the Government, an overwhelming majority of workers decided in favour of Belkhimprofsoyuz primary trade union organization; as a result, the BNP-affiliated union membership fell down. Thus, the Government concludes that the sharp fall in membership of the primary trade union was mainly a consequence of the choice made by workers. The Government also indicates that retirement of workers as well as the termination of employment was also a factor in the decline of the union membership. The Government points out that the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council) received no information about

specific instances of members of the BNP primary trade union organization being pressured by the enterprise management to leave the BKDP-affiliated trade union. Workers who believe that they have been subject to anti-union discrimination or pressure by may apply to a court for measures to end the discrimination.

The Committee notes the new allegations submitted by the BKDP regarding interference by enterprise managers in trade union affairs. According to the BKDP, enterprise managers, for the most part, are still members of the FPB. It alleges, in addition, that at most enterprises, employees, when hired, are first sent to the trade union committee, where they are urged to write an application for affiliation to the official trade union to get a job. A citizen is thus deprived of the right to freely choose a union and members of independent trade unions are forced to quit their union organizations. The BKDP refers, in particular, to the situation at the above-mentioned Belaruskali where the director general has joined the Belkhimprofsoyuz to become its official and head the anti-union campaign against the independent union. The BKDP alleges that as a result, between 1 January and 1 April 2019, 596 workers were forced to renounce their NPG membership. The BKDP further refers to a similar situation at the Remmontazhstroy company where the independent union lost 180 members within the same period. The BKDP further alleges threats of termination of contract suffered by Mr Drazhenko, the head of primary trade union at the Borisov "Autohydraulic booster" plant for his active trade union position. ***The Committee requests the Government to provide its detailed comments on the above.***

The Committee had previously welcomed the Government's indication that a training course on international labour standards for judges, lawyers and legal educators was to take place with ILO support in 2017 and requested the Government to provide information on the outcome of this activity. The Committee notes the Government's indication that this course allowed judges, lawyers and legal educators to increase their knowledge of the practical application of international labour standards, which they are now applying in their professional work.

In this connection, the Committee recalls that it had also expected that the public authorities, in particular the Ministry of Justice, the Office of the Prosecutor-General and the judiciary, together with the social partners, as well as other stakeholders (for example, the Belarusian National Bar Association) would continue working together towards building a strong and efficient system of dispute resolution which could deal with labour disputes involving individual, collective and trade union matters. The Committee notes with ***regret*** the BKDP indication that the work on developing an effective mechanism for resolving non-judicial disputes which could deal with labour disputes, including individual, collective and trade union disputes, is neglected completely. ***The Committee requests the Government to provide its comments thereon. The Committee invites the Government to continue to take advantage of ILO technical assistance in this regard.***

*Article 4. Right to collective bargaining.* The Committee had previously noted that a collective bargaining procedure at enterprises with more than one trade union had been agreed upon and included in clause 45 of the General Agreement between the Government and the national organizations of employers and trade unions for 2016–18. Pursuant to this provision, a single body comprising representatives of all unions active at an enterprise would negotiate a collective agreement to which all trade unions could become a party. The Committee notes with ***interest*** that the same provision is now included in the General Agreement for 2019–2021 (clause 49).

The Committee recalls the BKDP allegation that this procedure was not respected by the management of a glass fibre company in Polotsk, an enterprise producing tractor parts in Bobruisk and a company producing tractors in Minsk. The Committee notes the Government's indication that as regard the first enterprise, the primary trade union of the Belarusian Free Trade Union (SPB) did not name any representatives for the inclusion in the collective bargaining committee. The Government points out that the collective agreement for 2014–17 applied to all of the enterprise's workers. On 28 January 2016, the enterprise received a written request for collective bargaining from the SPB primary organization. Pursuant to the legislation in force, it was requested to confirm that it had members at the enterprise and that it was authorized to represent their interests. As no such confirmation followed, the union could not initiate collective bargaining process. The Government indicates that the latest collective agreement was concluded for 2017–20 by representatives of the primary organization of Belkhimprofsoyuz. As regards Bobruisk plant, the Government indicates that a collective agreement was concluded on 26 March 2016 by the chairperson of the primary organization of the Belarusian Automobile and Agricultural Machinery Workers Union. Representatives of the SPB primary trade union did not participate in the work of the committee established for the purposes of collective bargaining, as the competence of this primary organization had not been confirmed in the proper manner. As regards the Minsk plant, the Government indicates that according to the enterprise management, neither the Belarusian Union of Radio and Electronics Workers (REP), nor the trade union group established by this union in February 2016, stated that they wished to join the collective agreement concluded at the enterprise for 2014–16, and no documents were provided confirming that it represented workers at the enterprise.

The Committee notes that the BKDP alleges several other instances where clause 45 of the previous General Agreement was not respected. In this connection, the Committee notes the Government's indication that taking into account the complaints received from the BKDP, the issue of compliance with the procedure for collective bargaining where more than one trade union exist, as specified in the General Agreement for 2016–18, has been examined a number of times within the framework of the tripartite Council. The tripartite Council drew the attention of all social partners to the need to comply with clause 45 of the General Agreement. Upon the proposal by the BKDP, this issue was once again examined on 6 March 2018. On that occasion, the tripartite Council requested both the employer and the worker members to provide assistance and to carry out work among its member associations to explain and clarify the issues arising from clause 45 of the General Agreement for 2016–18. The Council concluded that clause 45 applies exclusively to representatives of trade union organizations that are actually operating at an organization (enterprise) and that have members from among the workers of that organization (enterprise). ***The Committee trusts that any issues of compliance with the General Agreement will continue to be brought to the attention of the Council where they can be examined in the tripartite setting.***

The Committee notes the Government's indication that the tripartite Council operates effectively in Belarus and is the main forum for stakeholders to discuss issues relating to the implementation of the Commission of Inquiry's recommendations. The Council also decides on proposals of areas of collaboration with the ILO. The Government informs in this respect, that on the basis of such proposals, a meeting of the tripartite Council held with the participation of the ILO representatives in February 2019, discussed the issue of collective bargaining at various levels. It was agreed that the work in this respect would continue with the ILO support with the view to improving legislation and practice in this area. The Committee notes that in its report on the application of Convention No. 87, the Government informs that a follow-up meeting of the tripartite Council was held in November 2019 to discuss proposals on the issue of collective bargaining elaborated in collaboration with the ILO. The Government believes the proposals and recommendations are a good basis for the tripartite parties to develop solutions acceptable to all. ***The Committee requests the Government to provide information on all developments in this regard.***

## Belize

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 3 of the Convention. Compulsory arbitration.* The Committee recalls that in its previous comments it had requested the Government to amend the Settlement of Disputes in Essential Services Act 1939 (SDESA), as amended on several occasions, which empowers the authorities to refer a collective dispute to compulsory arbitration, to prohibit a strike or to terminate a strike in services that cannot be considered essential in the strict sense of the term, including the banking sector, civil aviation, port authority, postal services, social security scheme and the petroleum sector. The Committee notes with ***regret*** from the information provided by the Government that while the Schedule to the SDESA was amended twice in 2015, the long-standing comments of the Committee were not addressed. Instead, the two amendments expanded the field of application of the SDESA and added to its Schedule the "port services involving the loading or unloading of a ship's cargo", which are also services that do not constitute 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 of part of the population. ***The Committee requests the Government to amend the Schedule to the SDESA so as to permit compulsory arbitration or a prohibition on strikes only in services that are essential in the strict sense of the term, and to provide information on all progress made in this regard.***

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

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee had noted the observations of the International Trade Union Confederation (ITUC) in 2014. The Committee notes with ***regret*** that the Government has not yet replied to these observations and requests it once again to provide its comments in this respect.

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* In its previous comments, following the 2011 ITUC observations regarding those two sectors, the Committee had requested the Government to provide statistics on the number of acts of anti-union discrimination that are reported to the authorities in the banana plantation sector and in export processing zones and on the outcomes of the denunciations in this respect. The Committee notes that the Government indicates that during the reporting period (July 2013 to June 2017) no acts of anti-union discrimination were denounced to the authorities in these sectors. ***Highlighting that the absence of anti-union discrimination complaints may be due to reasons other than an absence of anti-union discrimination acts, and recalling the specific allegations raised by the ITUC, the***

***Committee requests the Government to take the necessary measures to ensure that, on the one hand the competent authorities take fully into account in their control and prevention activities the issue of anti-union discrimination, and that on the other hand, the workers in the country are fully informed of their rights regarding this issue. The Committee requests the Government to provide information on measures taken in this regard, as well as any statistics concerning the anti-union discrimination acts reported to the authorities.***

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee had requested the Government to take measures to amend section 27(2) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act (TUEOA), which provides that a trade union may be certified as the bargaining agent if it is supported by at least 51 per cent of employees, as this requirement of an absolute majority may give rise to problems given that, if this percentage is not attained, the majority union would be denied the possibility of bargaining. In its latest comment, the Committee noted the Government's indication that: (i) the Tripartite Body and the Labour Advisory Board had engaged in discussions on a possible amendment to the Act; and (ii) based on these consultations, it had been recommended to reduce to 20 per cent the trade union membership threshold required to trigger a poll, while retaining the requirement of a 51 per cent approval of those employees voting and to require a turnout at the poll of at least 40 per cent of the bargaining unit. The Committee notes that the Government indicates that section 27(2) of the TUEOA has not been amended but that discussion continues among the social partners in this regard. ***The Committee requests the Government to continue promoting social dialogue in order to bring section 27(2) of the TUEOA into conformity with the Convention and to provide information on any developments in this respect. The Committee reminds the Government that it may avail itself of technical assistance from the Office.***

*Promotion of collective bargaining in practice.* ***The Committee requests the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements.***

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



## Bosnia and Herzegovina

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee takes note of the Government's reply to the 2016 observations from the International Trade Union Confederation (ITUC).

*Article 2 of the Convention. Scope of application.* In its previous comment, on the basis of section 6 of the Labour Act of the Federation of Bosnia and Herzegovina, 2016 (the FBiH Labour Act), section 5 of the Labour Act of the Republika Srpska, 2016 (the RS Labour Act) and section 2(5) of the Labour Act of the Brčko District of Bosnia and Herzegovina, 2006 (the BD Labour Act), the Committee requested the Government to indicate whether specific categories of workers – workers without an employment contract, domestic workers, workers in the informal economy and self-employed workers – enjoy, in law and practice, the rights guaranteed by the Convention, and if not, to take the necessary measures to amend the relevant labour legislation in this regard. The Committee notes the Government's indication that: (i) in the Federation of Bosnia and Herzegovina, the right to associate is primarily enjoyed through the Act on Associations and Foundations in the Federation of Bosnia and Herzegovina (the FBiH Act on Associations and Foundations) which gives all persons without discrimination the right to form associations in order to proclaim or protect their rights and interests, irrespective of whether they are employees or not; (ii) while the specific protection of employees to organize in trade unions is separately provided by the provisions of the FBiH Labour Act, this does not prevent persons who are not employees to associate and protect their interests in accordance with the FBiH Act on Associations and Foundations; (iii) it is not necessary to review the existing labour legislation and no measures have been taken in order to expand the right to organize to persons outside the definition of worker (natural person employed on the basis of an employment contract – section 6 of the FBiH Labour Act); and (iv) in Republika Srpska, the legislation makes a distinction between trade unions and all other types of formal or informal associations of workers or citizens: all persons having the status of workers under section 5 of the RS Labour Act can form trade unions, whereas the persons who do not have the status of a worker formally or legally can establish organizations, by virtue of the Act on Associations and Foundations of the Republika Srpska, 2001 (the RS Act on Associations and Foundations) with a view to improving their position and protecting their interests, thus exercising the rights guaranteed by the Convention. The Committee observes, however, that the FBiH Act on Associations and Foundations and RS Act on Associations and Foundations do not provide the same guarantees to workers in terms of the right to organize and associated rights, and that both in the Federation of Bosnia and Herzegovina and in the Republika Srpska, specific categories of workers are thus not covered by all the guarantees of the Convention. The Committee notes that no information has been provided in respect of this issue in the Brčko District. The Committee further understands from the information provided by the Government under this Convention and the Right of

Association (Agriculture) Convention, 1921 (No. 11), that the distinction between employees, who benefit from the rights granted by the Convention, and other workers is also applicable to the agricultural sector. ***Recalling that the right to organize should be guaranteed to all workers without distinction or discrimination of any kind, including to workers without an employment contract, domestic workers, agricultural workers, workers in the informal economy and self-employed workers, the Committee once again encourages the Government to revise the relevant legislation in the three entities to ensure that the above categories of workers enjoy, in law and in practice, all the rights guaranteed by the Convention.***

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

## Botswana

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

The Committee takes note of the observations of the Botswana Federation of Trade Unions (BFTU) received on 1 October 2020 relating to matters examined in the present comment. It notes that the observations of the BFTU also allege dismissals of workers because of industrial action following the adoption on 9 April 2020 of an Emergency Powers Act, which included a clause that restricted workers and employers from taking part in industrial action. ***The Committee requests the Government to provide its comments thereon.***

Not having received other supplementary information, the Committee reiterates its comments adopted in 2019 and reproduced below.

The Committee notes the Government's reply to the observations made by the International Trade Union Confederation (ITUC) and the Trainers and Allied Workers Union (TAWU) in 2013 and 2014.

*Legislative developments.* The Committee recalls that, following the recommendations made by the Conference Committee on the Application of Standards (Conference Committee) in 2017 and 2018: (i) the Government had embarked on a labour law review process; (ii) a tripartite Labour Law Review Committee (LLRC) was established; and (iii) the LLRC decided to focus the review on the Employment Act and the Trade Unions and Employers Organisations (TUEO) Act, the Public Service Act of 2008 (PSA) and the Trade Disputes Act of 2016 (TDA). In its last observation, the Committee had noted that both the Government and the Botswana Federation of Trade Unions (BFTU) had indicated that the work by the LLRC was ongoing and that progress was being made with respect to the implementation of the Conference Committee's recommendations. The Committee had also noted the Government's indication that, given that a review of the list of essential services was of critical importance to workers, a task team had been formed to review such list under section 46 of the TDA.

In its last report, the Government indicates that, while the labour law review is still ongoing, on 8 August 2019, the Parliament passed the TDA (Amendment) Act 2019, which amends the list of the essential services. The Committee notes with ***satisfaction*** that, in line with its recommendations, the following services have been deleted from the list of essential services: diamond sorting, cutting and selling services; teaching services; government broadcasting services; the Bank of Botswana; vaccine laboratory services; railways operation and maintenance services; immigration and customs services; transportation and distribution services of petroleum products; sewerage services; public veterinary services; and services necessary to the operation of any of these services.

The Committee takes note that, accordingly, the list of essential services under section 46 of the TDA (Amendment) Act 2019 contains the following services: air traffic control services; fire services; the provision of food to pupils of school age and the cleaning of schools; electrical services (electricity teams for generation, transmission and distribution); water and sanitation services; and health services as well as transport and telecommunication services required for the provision of any of the previously mentioned services. The Committee notes the Government's indication that such ancillary transport and telecommunication services have been included in light of the particular circumstances prevailing in the country and considering, for instance, the need for ambulances or the services of operators who take note and transmit the details of patients in cases of accidents for paramedics to attend to the scene.

The Committee recalls that, in its previous comments, it had also requested the Government to take the following legislative measures:

– amend section 2(1)(iv) of the TUEO Act and section 2(11)(iv) of the TDA, which exclude employees of the prison service from their scope of application, as well as section 35 of the Prison Act, which prohibits members of the prison service from becoming members of a trade union or anybody affiliated to a trade union. The Committee notes that the Government indicates that while it considers that prison staff perform a security function, the LLRC with ILO assistance is engaging the relevant stakeholders on this matter;

– amend section 43 of the TUEO Act, which provides for inspection of accounts, books and documents of a trade union by the Registrar at "any reasonable time". The Committee notes the Government's indication that this matter is being considered in the labour law review process;
– amend section 48B(1) of the TUEO Act, which grants certain facilities (such as access to premises or representation of members in case of complaint, etc.) only to unions representing at least one third of the employees in the enterprise. The Committee notes the Government's indication that this matter is being considered in the labour law review process.

***Trusting that all pending matters in relation to the above-mentioned Acts will be addressed in the framework of the ongoing labour law review process, the Committee urges the Government to take measures to ensure that such Acts are amended, in consultation with the social partners, so as to bring them into full conformity with the Convention. The Committee requests the Government to continue providing information on any progress achieved in this regard and to provide a copy of the amended Acts once adopted.***

The Committee had previously taken note that the labour law review process had been extended to include the PSA and had requested the Government to provide information on the progress made in this regard. ***Noting that the Government has not provided information in this respect, the Committee reiterates its previous request to the Government to provide information on the progress made in the review of the PSA and to provide a copy of the amended Act, once adopted.***

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

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

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

The Committee takes note of the observations of the Botswana Federation of Trade Unions (BFTU) received on 1 October 2020 relating to issues examined in the present comment. It notes that the BFTU, in its observations, also alleges repeated acts of anti-union discrimination, including anti-union dismissals, in the mining sector, as well as violations of the right to collective bargaining in the private sector. ***The Committee requests the Government to provide its comments in response to these allegations.***

Not having received other supplementary information, the Committee reiterates its comments adopted in 2019 and reproduced below.

*Legislative issues.* The Committee recalls that for many years it has been requesting the Government to take the following legislative measures:

(a) amend section 2 of the Trade Disputes Act (TDA), section 2 of the Trade Union and Employers' Organizations (TUEO Act), and section 35 of the Prisons Act so as to ensure that prison staff are afforded all the guarantees provided under the Convention;
(b) adopt specific legislative provisions ensuring that all union committee members, including those of unregistered trade unions, enjoy an adequate protection against anti-union discrimination;
(c) adopt specific legislative provisions ensuring adequate protection against acts of interference by employers coupled with effective and sufficiently dissuasive sanctions;
(d) repeal section 35(1)(b) of the TDA, which permits an employer or employers' organization to apply to the Commissioner to withdraw the recognition granted to a trade union on the grounds that the trade union refuses to negotiate in good faith with the employer;
(e) amend section 20(3) of the TDA (this section read together with section 18(1)(a) and (e) allows the Industrial Court to refer a trade dispute to arbitration, including where only one of the parties made an urgent appeal to the Court for determination of the dispute) so as to ensure that the recourse to compulsory arbitration does not affect the promotion of collective bargaining;
(f) take the necessary legislative measures so as to ensure that if no union reaches the required threshold to be recognized as a bargaining agent, i.e., one third of the employees in a bargaining unit (section 48 of the TUEO Act read with section 32 of the TDA), the existing unions are given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members; and
(g) take the necessary legislative measures so as to ensure that the limitation imposed in the Public Service Act on the scope of collective bargaining for public sector workers not engaged in the administration of the State will fully comply with the Convention.

The Committee had previously expressed the hope that the above-mentioned legislative measures would be taken in the framework of the ongoing labour legislation review process to ensure the full conformity of the above-mentioned Acts with the Convention. The Committee notes that the Government indicates that the Committee's comments and concerns have been considered in the ongoing labour legislation review process which is being conducted with the assistance of the Office. It also notes the Government's indication that on 8 August 2019, the Parliament passed the TDA (Amendment) Act 2019.

The Committee observes, however, that while the said Act refers to issues related to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it does not address the questions raised by the Committee in the present comment. ***The Committee therefore recalls its previous request to the Government and expresses its firm hope that the necessary measures will be taken in the framework of the ongoing labour legislation review process so as to ensure the full conformity of the above-mentioned Acts with the Convention. The Committee requests the Government to provide information on the progress made in this respect.***

*Article 4 of the Convention. Collective bargaining in practice.* The Committee recalls that it has previously requested the Government to reply to observations made by the Trainers and Allied Workers Union (TAWU) in 2013 concerning violations of the right to collective bargaining in practice. While noting that the Government has not provided a reply to the said allegations, the Committee observes, from the information provided in the report, that out of the 40 collective agreements concluded between 2017 and 2019, three were negotiated by the TAWU. The Committee further notes that the 40 collective agreements were negotiated in a broad variety of sectors, including mining, retail, education, health, hotel, communication and services. ***The Committee requests the Government to continue to provide information on the number of collective agreements signed and in force in the country and to indicate the sectors and the number of workers covered.***

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

## Brazil

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee has updated its examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as the information at its disposal in 2019.

The Committee takes note of: (i) the observations of the National Confederation of Industry (CNI) received on 24 September 2020, in which it reiterates its previously expressed position on matters examined by the Committee in this comment; and (ii) the observations of the International Organization of Employers (IOE) received on 1 October 2020, in which the IOE reiterates its observations from the previous year and supports the observations of the CNI.

The Committee also notes: (i) the joint observations of the Single Confederation of Workers (CUT) the Confederation of Brazilian Trade Unions (CSB), and Union Forces, received on 12 June 2020; (ii) the observations of the International Trade Union Confederation (ITUC), received on 16 September 2020; (iii) the observations of Public Services International (PSI), received on 29 September 2020; (iv) the observations of the CUT, received on 1 October 2020; and (v) the observations of the National Confederation of Education Workers (CNTE), received on 1 October 2020. The Committee notes that these observations relate to subjects examined in the present comment, as well as allegations of violations of the Convention in practice, concerning which the Government has provided its comments. In this regard, the Committee notes, in the first place, the observations of the ITUC and CUT denouncing a ruling of the Higher Labour Court of September 2020 suspending the postal enterprise collective agreement and the Government's response that there has been no violation of collective bargaining, but merely a ruling by the higher court setting aside the decision by the court of first instance issued in 2019 in the context of the ongoing collective dispute in that sector. ***In light of the above, the Committee requests the Government to continue providing information on the continuation of collective bargaining in the postal enterprise.*** The Committee also notes the allegations by the ITUC concerning acts of violence and intimidation by the police against workers and their representatives during several strikes and workers' assemblies. The Committee notes the Government's indications in this regard that: (i) there were three isolated cases for which the information provided by the ITUC does not on its own offer proof of the occurrence of abuses by the police or the judicial authorities; (ii) it is not possible to ascertain what actually happened without a detailed analysis of the action by the police; and (iii) the Brazilian legal system offers adequate judicial remedies to deal effectively with this type of situation. ***Emphasizing the importance of workers' organizations being able to exercise their lawful activities in defence of the interests of their members in general and of collective bargaining in particular in a context free from violence, the Committee requests the Government to provide information on the results of the investigations concerning the cases referred to by the ITUC.***

*COVID-19 pandemic and the application of the Convention.* The Committee notes the allegations by the CUT, CSB, Union Forces and PSI that provisional measures No. 927 (MP No. 927, published on 22 March 2020) and No. 936 (MP No. 936, published on 1 April 2020), adopted in response to the COVID-19

pandemic, severely prejudice the right to collective bargaining by ensuring that individual agreements between the employer and the worker prevail over collective bargaining machinery. The Committee notes that the trade union confederations allege in particular that: (i) section 2 of MP No. 927 provides for the possibility of establishing by individual agreement the adaptations necessary for the maintenance of the labour contract in the context of the health crisis, with the individual agreement prevailing over all other legislative and collective sources of labour law, with the sole exception of constitutional guarantees; (ii) MP No. 927 grants the employer the unilateral power to decide whether or not to extend the application of collective accords that have expired and which cannot be renewed due to the health crisis; (iii) MP No. 936 (relating to temporary measures for the reduction of working time and the suspension of labour contracts during the health crisis and providing for the payment of compensatory benefits to the employees concerned from public funds) gives preference to the implementation of this arrangement by individual agreement as it only envisages its activation by collective accord for a small proportion of the employed labour force and does not grant the same financial compensation for reduced working time negotiated collectively; and (iv) as MPs Nos 927 and 936 do not make the activation of the emergency measures for the reduction of working time and the suspension of labour contracts subject to the demonstration by enterprises of their necessity, they establish the conditions for a real state of emergency.

The Committee notes that the Government, while emphasizing the need for rapid and effective responses to the situation of emergency caused by the pandemic, refutes any violation of the Convention and indicates in particular that: (i) MP No. 927 has made it possible to safeguard immediately jobs that are endangered by the crisis, in a situation of great uncertainty, including the possibility to engage in collective bargaining in a context of physical distancing; (ii) MP No. 927 has enabled employers to take various temporary measures in such areas as remote working, the dates of holidays and the organization of working time; (iii) MP No. 927 did not prohibit collective bargaining during the period for which it was in force and, although section 2 gave preference to individual agreements over collective and legislative sources of labour law, the requirement to comply with labour rights endowed with constitutional protection offered substantial guarantees surrounding individual agreements; (iv) during the period that it was in force, the Federal Supreme Court, called upon to examine the constitutionality of MP No. 927, refused to order its temporary suspension, particularly because it contributed to the imperative of safeguarding jobs during a situation of emergency; and (v) it was envisaged that, in the absence of legislative approval, MP No. 927 would expire on 19 July 2020 at the latest; as a result of the absence of action by the Congress, the MP has thus no longer formed part of Brazilian legal rules since that date.

With respect to MP No. 936, the Committee takes note that the Government indicates that: (i) the MP introduced an emergency programme for the maintenance of jobs and incomes with a view to mitigating the impact of the public emergency situation; (ii) MP No. 936 provides, through individual or collective agreements, for the temporary possibility, during the situation of public emergency, to either reduce working time and remuneration in a proportional manner, or to suspend the labour contract, with such agreements giving rise, on the one hand, to a guarantee of the maintenance of the job during the period under consideration and, on the other, the payment by the Government of a job and income preservation compensation benefit calculated on the basis of the level of unemployment insurance to which the worker would be entitled; (iii) access to these emergency measures is not subject to the need to demonstrate a reduction in activity by the enterprise with a view to making the process more flexible and saving as many jobs as possible; (iv) the appeal by the trade union confederations challenging the constitutionality of MP No. 936 was also rejected; (v) MP No. 936, which has allowed over 10 million jobs to be saved, was unanimously transformed into a legislative instrument by the two chambers of the Congress through Act No. 14.020 of 2020; (vi) in contrast with the allegations of the trade union confederations, the mechanisms set out in MP No. 936 and Act No. 14.020 can be set in motion through collective bargaining for all employees, irrespective of their earnings level; (vii) however, it is only for workers whose salary is between 3,135 and 12,102 *reais* that the reduction in working time or the suspension of their contract must necessarily be determined through a collective accord as, under the terms of the mechanism that has been established, they are the ones who have a lower replacement rate of their salary than those at a lower remuneration scale; (viii) there is no differentiation in the level of earnings compensation benefit provided depending on whether the decision to reduce working time or suspend the contract is made by individual or collective agreement, but only the general rule that no compensation is payable for reductions in working time of under 25 per cent; and (ix) finally, to promote collective bargaining, MP No. 936 has reduced the applicable waiting periods by half and the measures taken by the executive authorities have made it possible to engage in virtual bargaining.

The Committee takes due note of the information provided by the Government and the trade union confederations. The Committee fully recognizes the exceptional circumstances experienced by the country due to the pandemic and the absolute necessity to adopt urgent measures to mitigate the economic and social effects of the resulting crisis. At the same time, the Committee recalls its general position that measures adopted during an acute crisis which set aside the application of the collective agreements that are in force must be of an exceptional nature, limited in time and provide guarantees for

the workers most affected. The Committee also emphasizes that the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), underlines the importance of social dialogue in general and collective bargaining in particular in responding to crisis situations by encouraging the active participation of employers' and workers' organizations in planning, implementing and monitoring measures for recovery and resilience.

The Committee observes that MP No. 927 which, with a view to safeguarding employment, established the temporary primacy of individual agreements over collective accords and empowered the employer to take a certain number of unilateral decisions, including whether to extend or not the application of collective accords that expire during the pandemic, is no longer in force. ***The Committee nevertheless requests the Government to specify whether the clauses of collective agreements that may have been temporarily set aside by individual agreements concluded between the employer and the worker or by unilateral decisions of the employer taken under the terms of MP No. 927 are once again fully applicable.***

With regard to MP No. 936, converted by the Congress into Act No. 14.020, the Committee understands that its objective is to allow the reduction of working time or the temporary suspension of the labour contract during the period of public emergency and to establish a temporary mechanism for the compensation of income from public funds. The Committee observes in this regard that, under the terms of the instruments referred to: (i) in the event of the reduction of working time, the hourly wage must be maintained; (ii) access to these mechanisms can be initiated either through a collective accord or an individual agreement for workers with low or very high incomes, but recourse to a collective accord is compulsory for workers with salaries in an intermediate range (around 11 per cent of the labour force, according to the Government); and (iii) when a collective accord is concluded, it prevails over individual agreements, except where the latter are more favourable to the employee. While recalling that it is the responsibility of the State under the terms of the Convention to promote collective bargaining machinery that applies to all workers irrespective of their income level, the Committee understands that the income protection mechanisms in the event of the reduction of activity established by MP No. 936 and Act No. 14.020 are not intended to set aside collective agreements and accords that are in force, but to establish a temporary system for reduced activity and income compensation that can be set in motion by individual agreement or collective accord. ***In these conditions, and on the basis of the principles referred to above, while duly noting the substantial efforts made by the Government to attenuate the loss of income by workers, the Committee encourages the Government to reinforce dialogue with the representative organizations of employers and workers with a view to assessing the impact of the implementation of Act No. 14.020, ensuring the application of collective agreements and accords that are in force and promoting, for all the workers covered by the Convention, the full utilization of collective bargaining machinery as a means of achieving balanced and sustainable solutions in a time of crisis. The Committee requests the Government to provide information on this subject.***

The Committee also notes the allegations by the ITUC that the combined effect of the economic crisis caused by the pandemic and the possibility, arising out of the reform of labour legislation in 2017, of setting aside through collective bargaining a significant proportion of the protective provisions of the labour legislation could lead workers to accept lower terms and conditions of work and remuneration to keep their jobs. The Committee notes in this regard the Government's reply refuting these claims and emphasizing both the guarantees and the flexibility offered by the new labour legislation with a view to preserving employment. ***While noting these indications, the Committee requests the Government to provide information in its next report on the number and content of the agreements and accords concluded during the period of public emergency, with an indication of the frequency of the exemptions from the protective provisions of the labour legislation that they may contain.***

The Committee also notes the following observations received in 2019 relating to matters examined by the Committee in the present comment: (i) the observations of the CUT, received on 20 May 2019; (ii) the joint observations of the ITUC, the Building and Wood Workers International (BWI), Education International (EI), IndustriALL Global Union (IndustriALL), the International Transport Workers' Federation (ITF), the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), PSI and UNI Global Union, received on 1 September 2019; (iii) the observations of the CNI and the National Confederation of Transport (CNT), both received on 1 September 2019; (iv) the observations of the NCST, received on 10 September 2019; and (v) the joint observations of the CUT and ITUC received on 18 September 2019.

The Committee also notes the observations of the IOE, received on 30 August 2019, containing the interventions made by employers during the Committee on the Application of Standards of the International Labour Conference in 2019 (hereinafter the Conference Committee).

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussions in the Conference Committee in June 2019 on the application of the Convention by Brazil. The Committee notes that the Conference Committee requested the Government to: (i) continue to examine, in cooperation and consultation with the most representative employers' and workers' organizations, the impact of the reforms and to decide if appropriate adaptations are needed; and (ii) prepare, in consultation with the most representative employers' and workers' organizations, a report to be submitted to the Committee of Experts in accordance with the regular reporting cycle.

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* In its previous comments, the Committee noted that, in the context of various complaints examined by the Committee on Freedom of Association (Cases Nos 2635, 2636 and 2646) alleging acts of anti-union discrimination, the Government had indicated that, "although freedom of association is protected under the Constitution, the national legislation does not define anti-union acts, and this prevents the Ministry of Labour and Employment from taking effective preventive and repressive measures against conduct such as that reported in the present case". In its previous comments, based on the information provided by the Government, the Committee expressed the hope that, in the context of the Labour Relations Council (CRT), it would be possible to prepare draft legislation explicitly establishing remedies and sufficiently dissuasive sanctions against acts of anti-union discrimination.

The Committee notes the Government's indication, in its 2019 report and the supplementary information provided in 2020, that: (i) freedom of association is protected by the Constitution; (ii) although the ordinary legislation does not contain a section on anti-union acts, it does have a section on the rights of trade union members; (iii) within this part, section 543 of the Consolidation of Labour Laws (CLT) establishes the employment stability of trade union representatives and section 543(6) establishes an administrative penalty for any employer that prevents a worker from exercising her or his trade union rights, without prejudice to the right to compensation that could be obtained by the latter; and (iv) section 199 of the Penal Code criminalizes the use of threats or violence to prevent a person from joining a union. The Committee also notes the indication by the CNT that new section 510-B of the CLT attributes the function to the committees of workers' representatives of ensuring the prevention of any discrimination, including anti-union discrimination in the enterprise. The Committee takes note of this information. It observes in this regard that: (i) by virtue of Provisional Measure No. 905 of November 2019 (MP No. 905) administrative penalties applicable in the event of non-compliance with section 543(6) of the CLT were those imposed in relation to labour law violations in general; and (ii) MP No. 905 is no longer in force as it has not been confirmed by the Congress of the Republic. ***Recalling the fundamental importance of ensuring effective protection against anti-union discrimination, the Committee requests the Government to take the necessary measures to ensure that the legislation explicitly establishes specific and sufficiently dissuasive sanctions against all acts of anti-union discrimination. The Committee requests the Government to report any developments in this regard.***

*Article 4. Promotion of collective bargaining. Relationship between collective bargaining and the law.* In its 2017 and 2018 comments, the Committee noted that, under the terms of Act No. 13467, adopted on 13 November 2017, new section 611-A of the CLT introduced the general principle that collective agreements and accords prevail over the legislation, and it is therefore possible through collective bargaining to derogate from the protective provisions of the legislation, with the sole limit of the constitutional rights referred to in section 611-B of the CLT. The Committee recalled that it considered that, while targeted legislative provisions covering specific aspects of conditions of work and providing, in a circumscribed and reasoned manner, for the possibility of their replacement by means of collective bargaining may be compatible with the Convention, a legal provision providing for a general possibility to derogate from labour legislation by means of collective bargaining would be contrary to the purpose of promoting free and voluntary collective bargaining established in *Article 4* of the Convention. On this basis, the Committee requested the Government, in consultation with the representative social partners, to take the necessary measures for the revision of sections 611-A and 611-B of the CLT so as to specify more precisely the situations in which clauses derogating from the legislation may be negotiated collectively, as well as the scope of such clauses.

The Committee notes the joint observations of the ITUC, BWI, EI, IndustriALL, ITF, IUF, PSI and UNI Global Union, which denounce the harmful effects deriving from the general possibility to derogate through collective bargaining from the protective provisions of the legislation. The Committee notes that the international trade union organizations consider that the new relationship between collective bargaining and the law established by Act No. 13467: (i) radically undermines the pillars on which collective bargaining machinery is established and constitutes a frontal attack on free and voluntary collective bargaining, as guaranteed by the Convention; (ii) creates the conditions for a race to the bottom between employers for the reduction of workers' rights; and (iii) has a dissuasive effect on the exercise of collective bargaining which is reported to have resulted in a decrease of 39 per cent in the coverage rate of collective

bargaining in the country. The Committee also notes the observations of the CUT, which indicates that: (i) the measures that make it possible to lower working conditions through negotiation do not promote the utilization of collective bargaining; and (ii) the reform has given rise to a significant fall in the number of collective agreements and accords concluded. The Committee also notes the observations of the NCST in this respect.

The Committee further notes the observations of the CNT and CNI, according to which sections 611-A and 611-B of the CLT: (i) offer great freedom to determine conditions of work that are favourable for all the parties through collective bargaining; (ii) are in conformity with the provisions of the Brazilian Constitution, in providing for the possibility to derogate from certain rights through a collective accord, as well as with the case law of the Supreme Federal Court, which emphasizes the need to respect agreements concluded by the social partners; and (iii) are in accordance with ILO Conventions on the subject, as indicated by the examination of the Conference Committee, which did not find any grounds for incompatibility with the Convention.

The Committee notes the information provided by the Government, which essentially reiterates the positions expressed in previous reports. The Committee notes the Government's indication that: (i) the 2017 legislative reform reinforces the role and value of collective bargaining by increasing its material scope, which is fully in conformity with the purposes of ILO Conventions on this subject, and particularly necessary in the context of excessively detailed labour legislation; (ii) the primacy recognized for collective agreements and accords over the law reinforces the legal security of collective bargaining, which is essential in view of the traditional interference by the Brazilian judicial authorities and responds to a historical demand by the Brazilian trade union movement; (iii) section 611-A of the CLT does not in any event require unions to conclude accords which set aside protective legal provisions, and the social partners can choose to continue to be governed by these legal provisions, when that is in the interests of the parties; (iv) the fact that section 611-A of the CLT establishes a non-exhaustive list of subjects on which collective agreements and accords may not derogate from the provisions of the legislation is intended to ensure the necessary flexibility for the social partners in their negotiations; (v) the reform also ensures the protection of 30 rights set out in section 611-B of the CLT, which cannot be set aside by collective bargaining; (vi) none of the 30 legal actions initiated at the national level against Act No. 13467 have been related to collective bargaining; (vii) a situation in which collective bargaining could only lead to additional benefits for workers would discourage employers from participating in such bargaining; (viii) following a reduction of 13.1 per cent in 2018, the number of collective agreements and accords began to rise over the first four months of 2019 to come close to the levels prior to the reform; and (ix) as found by a detailed study carried out by the Institute of Economic Research Foundation (FIPE), the agreements negotiated are favourable to workers and cover more areas than before, which shows that the alleged dissuasive effect of section 611-A on collective bargaining has not occurred; and (x) the reform of the labour legislation has been welcomed by the World Bank, the Organisation of Economic Co-operation and Development, and the International Monetary Fund. Finally, the Committee notes the Government's statements that: (i) there is no textual basis for the position of the Committee that this Convention, as well as the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), have the general objective of promoting more favourable conditions of work than those set out in the legislation; and (ii) the reference by the Committee to the preparatory work for the Conventions is inappropriate.

The Committee notes the various elements referred to by the Government and the national and international social partners and notes that, in the supplementary information provided in 2020, the parties reiterate their previously expressed positions. The Committee notes, in the first place, the Government's indication that, contrary to the view expressed by the trade unions, the number of collective agreements and accords concluded is in the process of reaching the levels prior to the 2017 legislative reform. The Committee emphasizes the importance of continuing to have available full information on this subject, both on the number of agreements and accords concluded and their content. The Committee also notes the reiterated view by the Government and employers' organizations that sections 611-A and 611-B of the CLT promote collective bargaining within the meaning of the Convention by ensuring greater freedom to the negotiating parties and at the same time guaranteeing that many rights cannot be set aside through collective bargaining.

The Committee recalls in this respect that, on the basis of the detailed information provided by the Government, the Committee noted in its previous comments that: (i) the possibility of setting aside the protective provisions of the legislation through collective bargaining introduced by Act No. 13467 is indeed not absolute, as section 611-B of the CLT establishes a limitative list setting out 30 rights, based on the provisions of the Constitution of Brazil, which cannot be set aside through collective agreements or accords; and (ii) the possibilities for derogation from the legislation through collective bargaining opened up by section 611-A are however very extensive insofar as, on the one hand, the section refers explicitly to 14 points covering many aspects of the employment relationship and, on the other, this list, in contrast with the list set out in section 611-B, is solely indicative ("inter alia"), with the possibility of setting aside

the protective provisions of the legislation through collective bargaining thereby being established as a general principle.

The Committee recalls that it considers that, while targeted legislative provisions covering specific aspects of conditions of work and providing, in a circumscribed and reasoned manner, for the possibility of their replacement by means of collective bargaining may be compatible with the Convention, a legal provision providing for a general possibility to set aside the protective provisions of labour legislation by means of collective bargaining would be contrary to the objective of promoting free and voluntary collective bargaining, as set out in *Article 4* of the Convention. ***While emphasizing the importance of obtaining, insofar as possible, tripartite agreement on the basic rules of collective bargaining, the Committee therefore once again requests the Government to take the necessary measures, in consultation with the representative social partners, for the revision of sections 611-A and 611-B of the CLT so as to specify more precisely the situations in which clauses derogating from the legislation may be negotiated, as well as the scope of such clauses. Moreover, noting the Government's indications concerning the increase in the number of collective agreements and accords concluded during the first four months of 2019, the Committee requests the Government to continue providing information on developments in the number of collective agreements and accords concluded in the country, including on the agreements and accords which contain clauses derogating from the legislation, specifying the nature and scope of such derogations.***

*Relationship between collective bargaining and individual contracts of employment.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure the conformity with the Convention of section 444 of the CLT, under the terms of which workers who have a higher education diploma and receive a wage that is at least two times higher than the ceiling for benefits under the general social security scheme may derogate from the provisions of the applicable collective agreements in their individual contracts of employment.

The Committee notes the Government's indication in this regard that *Article 4* of the Convention does not refer to individual contracts of employment and that it reiterates in the supplementary information received in 2020 that section 444 of the CLT concerns a very small group of workers, generally higher managerial personnel, representing only around 0.25 per cent of the population. The Committee also notes the position of the employers' organizations, the CNI and CNT, which consider that the provisions of section 444 extend the possibilities for negotiation available to the workers concerned. The Committee finally notes the position expressed by the national and international trade union organizations, which call for the repeal of the provision.

The Committee recalls once again that the obligation to promote collective bargaining set out in *Article 4* of the Convention requires that the individual negotiation of the terms of the contract of employment cannot derogate from the rights and guarantees provided in the applicable collective agreements, on the understanding that contracts of employment can always set out more favourable terms and conditions of work and employment. The Committee also reiterates that this principle is explicitly set out in Paragraph 3 of the Collective Agreements Recommendation, 1951 (No. 91). While emphasizing once again that collective bargaining machinery can take into account the specific needs and interests of different categories of workers who may, if they so wish, be represented by their own organizations, the Committee recalls that the present Convention is fully applicable to the workers covered by section 444 of the CLT insofar as, under the terms of *Articles 5* and *6*, only the armed forces and the police *(Article 5)* and public servants engaged in the administration of the State *(Article 6)* may be excluded from the scope of application of the Convention. The Committee therefore reiterates that the Convention does not allow for an exclusion from its scope of application on the basis of the level of remuneration of the workers. ***The Committee therefore once again requests the Government, after consultation with the representative social partners concerned, to take the necessary measures to ensure the conformity of section 444 of the CLT with the Convention. The Committee requests the Government to provide information on any progress achieved in this respect.***

*Scope of application of the Convention. Autonomous and self-employed workers.* In its comments adopted in 2017 and 2018, based on the allegations made by the trade unions that the extension of the definition of self-employed workers as a result of new section 442-B of the CLT would have the effect of excluding a significant category of workers from the rights set out in the Convention, the Committee invited the Government to hold consultations with all the parties concerned with a view to ensuring that all autonomous and self-employed workers are authorized to participate in free and voluntary collective bargaining, and to identify the appropriate adaptations to be introduced into collective bargaining procedures to facilitate their application to these categories of workers.

The Committee recalls that, irrespective of the definition of autonomous and self-employed workers stemming from section 442-B of the CLT, all workers, including autonomous and self-employed workers, are covered by the provisions of the Convention. In this respect, in 2019 the Committee welcomed the Government's indications that, under the terms of section 511 of the CLT, which recognizes the right to organize of autonomous workers, these workers are also covered by the right to engage in collective

bargaining. The Committee also noted in this regard the similar position expressed by the CNT and CNI. At the same time, the Committee notes: (i) the call made by the ITUC and seven international trade union federations in 2019 for all measures to be taken to ensure the effective access of autonomous and self-employed workers to free and voluntary collective bargaining; (ii) the indication by the CUT in its observations in 2020 that, although section 511 of the CLT recognizes the right of autonomous workers to organize, this provision does not however grant them the possibility to have access to collective bargaining machinery, particularly in view of the absence of a counterpart and, in practice, the fact that the transition from the status of employee to that of autonomous worker under the terms of section 442-B would have the effect of excluding the workers concerned from the coverage of the collective agreements in force; and (iii) the indication by the Government in its supplementary information provided in 2020 that the emergence of various non-standard forms of work is an additional challenge for collective bargaining in all countries, particularly in view of the low unionization rate. ***In light of the above, noting the broad scope of section 511 of the CLT, the Committee invites the Government to: (i) provide examples of collective agreements or accords negotiated by organizations representing autonomous or self-employed workers or, at the least, of which the scope of application would cover these categories of workers; and (ii) engage in consultations with all the parties concerned with the objective of identifying appropriate modifications to be introduced into collective bargaining machinery to facilitate its application to autonomous and self-employed workers. The Committee requests the Government to provide information on the progress achieved in this respect.***

*Relationship between the various levels of collective bargaining.* The Committee previously noted that, under the terms of section 620 of the CLT, as amended by Act No. 13467, the conditions established in collective labour accords (which are concluded at the level of one or more enterprises) always prevail over those contained in collective labour agreements (which are concluded at a broader level, such as a sector of activity or an occupation). In this regard, the Committee requested the Government to indicate the manner in which respect for the commitments made by the social partners in the framework of agreements concluded at the level of the sector of activity or occupation is guaranteed and to provide information on the impact of section 620 of the CLT on recourse to the negotiation of collective agreements and collective accords, and on the overall coverage rate of collective bargaining in the country.

The Committee notes that the Government confines itself to indicating in this regard that the objective of section 620 of the CLT is to allow the conclusion of accords that are closer to the everyday reality of workers and the enterprise. The Committee also notes that the CNI and CNT consider that the primacy accorded in all cases to collective accords over collective agreements, of which the scope of application is broader, is fully in accordance with the provisions of the Convention, insofar as the latter does not establish any order of preference or hierarchy between the various bargaining levels.

The Committee recalls once again that, in accordance with *Article 4* of the Convention, collective bargaining must be promoted at all levels and that, in conformity with the general principle set out in Paragraph 3(1) of Recommendation No. 91, collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded. ***Noting the absence of replies by the Government in this regard, the Committee once again requests the Government to: (i) indicate the manner in which respect for the commitments made by the social partners in the framework of agreements concluded at the level of the sector of activity or occupation is guaranteed; and (ii) provide information on the impact of section 620 of the CLT on recourse to the negotiation of collective agreements and collective accords, and on the overall coverage rate of collective bargaining in the country.***

*Article 4. Promotion of free and voluntary collective bargaining. Subjection of collective agreements to financial and economic policy.* The Committee recalls that for many years it has been emphasizing the need to repeal section 623 of the CLT, under the terms of which the provisions of an agreement or accord that are in conflict with the standards governing the Government's economic and financial policy or the wage policy that is in force shall be declared null and void. In this regard, emphasizing that *Article 4* of the Convention requires the promotion of free and voluntary collective bargaining, the Committee recalled that: (i) the public authorities may establish machinery for discussion and the exchange of views to encourage the parties to collective bargaining to take voluntarily into account considerations relating to the Government's economic and social policy and the protection of the public interest; and (ii) restrictions on collective bargaining in relation to economic matters should only be possible in exceptional circumstances, that is in the case of serious and insurmountable difficulties in preserving jobs and the continuity of enterprises and institutions. The Committee notes that, in the supplementary information provided in 2020, the Government indicates that: (i) section 623 of the CLT, adopted in 1967, is not in accordance with the objectives of the Constitution of 1988 and is therefore no longer applied; and (ii) the only limitation that is currently in force concerns the prohibition of the automatic adjustment of wages on the basis of the price index to prevent an increase in inflation, which places no restriction on wage negotiations on the basis of other factors. ***While taking due note of the Government's indications, the Committee observes that the 2017 reform of the labour legislation did not remove section 623 of the CLT.***

***The Committee therefore once again requests the Government to take the necessary measures to amend the legislation as indicated above and to provide information in its next report on any measures adopted in this regard.***

The Committee is raising other matters in a request 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 supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year (see last paragraph, concerning section 51 of the Railway Transport Act), as well as on the basis of the information at its disposal in 2019.

The Committee also notes the observations of the Confederation of Independent Trade Unions in Bulgaria (CITUB), transmitted with the Government's report in 2019 and alleging that sections 44 to 46 of the Civil Servants Act are insufficient to guarantee in practice the right to organize of civil servants, as well as of other workers under a labour relation; and affirming that the Civil Servants Act, together with the Ministry of Interior Act and the Judiciary Act, should be amended to fully guarantee all rights under the Convention to these workers and their organizations. ***The Committee requests the Government to provide its observations in this respect.***

The Committee further notes the observations of the Bulgarian Industrial Association (BIA), transmitted with the Government's supplementary report and alleging that certain sectoral regulations – namely the Forestry Act, the Act on Wine and Alcoholic Beverages, the Act on Tobacco and Related Products – interfere in the freedom of association of employers, in particular as to the autonomy and operation of branch associations of producers and traders, which at the same time perform functions to protect the interests of employers in the respective industry. ***The Committee requests the Government to provide its observations in this respect***.

The Committee finally notes the observations of the Union for Private Economic Enterprise (UPEE) and the Confederation of Labour (PODKREPA), concerning the supplementary information provided by the Government and transmitted with its report.

*Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes.* The Committee recalls that for a number of years it had been raising the need to amend section 47 of the Civil Servants Act (CSA), which restricted the right to strike of public servants. The Committee takes note with ***satisfaction*** that section 47 of the CSA has been amended to recognize the right to strike of civil servants. The Committee notes that the Government indicates that: (i) the right is applicable to all civil servants with the exception of managing senior civil servants, that is those holding the positions of Secretary-General, Municipal Secretary, Director General of the Directorate-General, Director of a Directorate and Head of Inspectorate; and (ii) section 47 also provides that participation of civil servants in a legal strike is counted as official length of service, for the time during which they participate in a legal strike civil servants have a right to compensation, and it is explicitly prohibited to seek disciplinary action or liability for civil servants participating in a legal strike.

The Committee further recalls its comments concerning the need to amend section 11(2) of the Collective Labour Disputes Settlement Act (CLDSA), which provides that the decision to call a strike shall be taken by a simple majority of the workers in the enterprise or the unit concerned; and section 11(3), which requires the strike duration to be declared in advance. The Committee notes the Government's indication, on the requirement of support by a majority of the workers that: (i) the requirement is justified as it creates certainty that the objectives pursued by the strike are common for most of the workers and employees, and not just for a small part of them; (ii) the CLDSA provides for the possibility that the simple majority is taken only by the workers and employees in a particular division of the enterprise; (iii) the CLDSA does not explicitly specify the manner in which the decision to strike should be taken, so that it is not necessary to bring all workers and employees together in one place at the same time; and (iv) workers and employees who have expressed their consent to strike are not bound by the obligation to participate in it and it is not uncommon in practice for the number of those effectively striking to be smaller than the number of workers and employees who have given their consent to the strike. While noting these explanations from the Government, the Committee must recall again that requiring a decision by over half of all the workers involved in the enterprise or unit in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises, and that if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at a reasonable level (see the 2012 General Survey on the fundamental Conventions, paragraph 147). As to the requirement to

indicate the duration of the strike, the Committee notes that the Government indicates that: (i) prior notice of the duration of the strike is aimed at determining the period during which the parties make efforts to settle the dispute definitively through direct negotiation, mediation or any other appropriate means, and that the requirement seeks to encourage the parties to make every effort possible to resolve the dispute; and (ii) the CLDSA does not restrict the right to strike, as it does not prohibit workers and employees from continuing their strike actions by making a decision to do so. In this respect, the Committee must recall once again that workers and their organizations should be able to call a strike for an indefinite period if they so wish without having to announce its duration. ***The Committee requests the Government to provide information on any developments concerning sections 11(2) and 11(3) of the CDLSA, and to indicate what are the requirements for continuing a strike action beyond its initially determined duration, in particular whether a new vote and decision by the workers concerned must take place, or whether instead a decision by the trade union calling the strike is enough.***

In its previous comments, the Committee has also been raising the need to amend section 51 of the Railway Transport Act (RTA), which provides that, where industrial action is taken under the Act, the workers and employers must provide the population with satisfactory transport services corresponding to no less than 50 per cent of the volume of transportation that was provided before the strike. The Committee welcomed the Government's indication that the Ministry of Labour and Social Policy recalled to the Ministry of Transport, Information Technologies and Communications (MTITC) the need for amendment of the aforementioned section 51 of the RTA in order to be in compliance with the Convention; and that the MTITC expressed readiness to take the necessary steps to amend the aforesaid section. The Committee notes that in its supplementary report the Government informs of a proposal to amend section 51 of the RTA submitted by the MTITC, which: (a) introduces a new paragraph 2 providing that workers, employers and railway authorities have to agree in the collective agreement which of the railway routes for passenger transport declared in the annual train schedule shall constitute the percentage under paragraph 1 (i.e. no less than 50 per cent), as well as the type and number of personnel required to carry out these services; (b) introduces a new paragraph 3, according to which in case of disagreement the parties may seek assistance for settlement of the dispute through mediation and/or voluntary arbitration by the National Institute for Conciliation and Arbitration; but (c) maintains in paragraph 1 the obligation to provide no less than 50 per cent of the amount of transport services (to which it adds the precision that this will be in relation to the transport services "at the time" of taking strike actions). The MTITC notes that section 51 has not been an obstacle for the exercise of the right to strike by employees of the national railway infrastructure company and its subsidiaries (referring to concrete examples of its use in 2011) and defends the need for such provision by referring to the rights of passengers, arguing that they should be able to travel by rail transport regardless of the interests of the trade union organizations. While welcoming that the draft amendment being considered provides for the participation of social partners in definition of the minimum services, as well as for a mechanism for the resolution of disputes when agreement cannot be reached, the Committee observes that it does not fully address its previous comments. In this respect, the Committee recalls that while a minimum service may be established in services of fundamental importance such as railway transportation, in order to ensure adequate respect of the right of workers' organizations to organize their activities, such minimum service must be limited to the operations 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; and that the establishment of too broad a minimum service (like no less than 50 per cent) restricts one of the essential means of pressure available to workers to defend their economic and social interests. The Committee notes in this regard the observations of PODKREPA, alleging that the "no less than 50 per cent" requirement is too large, noting that currently the negotiation of minimum services is practically impossible, and proposing that the percentage subject to settlement through collective bargaining be up to 20 per cent, so as to both allow for the right to strike and ensure the provision of minimum services. ***The Committee requests the Government to revise section 51 of the RTA, in consultation with the most representative organizations, in order to ensure that it does not unduly restrict the right of workers' organizations to organize their activities through collective action while also covering no more than operations strictly necessary to meet the basic needs of the population or the minimum requirements of the service. The Committee recalls that the Government may avail itself of the technical assistance of the Office in this regard and requests the Government to provide information on any progress on the matter.***

## Burundi

### Right of Association (Agriculture) Convention, 1921 (No. 11) (ratification: 1963)

The Committee notes the Government's report, received during the first half of 2020, as well as the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020). It also notes the observations of the Trade Union Confederation of Burundi (COSYBU),

received in August 2019 and August 2020, concerning the matter addressed in the present comment, as well as the Government's reply.

In its previous observations, the Committee had expressed the hope that the Government would make every effort to take the necessary steps, in the near future, to amend or repeal Legislative Decree No. 1/90 of 25 August 1967 on rural associations, which provides that, in the event of a public donation, the Minister of Agriculture may establish rural associations (section 1), membership of which is compulsory (section 3), and that the Minister determines their statutes (section 4), which, inter alia, oblige members to provide services for the common enterprise, pay a single or regular contribution, provide agricultural or livestock products and observe rules respecting cultural discipline and other matters (section 7), under penalty of the seizure of the member's property (section 10). The Committee notes that the Government states in its report that the Legislative Decree is no longer taken into consideration and that it agrees that it needs to be amended or repealed. It notes the Government's indication that steps will be taken to this effect in the near future. The Committee also notes that, in its observations, COSYBU asks the Government to accelerate the process to repeal the Legislative Decree, in consultation with the social partners. ***The Committee trusts that the necessary measures to amend or repeal Legislative Decree No. 1/90 of 25 August 1967 will be taken without delay and requests the Government to provide information on any developments in this respect.***

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

The Committee takes note of the Government's report received in the first half of 2020 and the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). It also notes the observations of the Trade Union Confederation of Burundi (COSYBU) received in August 2019 and August 2020 on the issues examined in the present comment, as well as the Government's response thereon.

*Revised Labour Code.* The Committee notes the Government's indication that a revised Labour Code has been adopted by the National Assembly and the Senate but has not yet been promulgated. Because the text of this revised Labour Code has not been sent to the Office, the Committee is not in a position to assess its conformity with the Convention. ***The Committee requests the Government to provide a copy of the adopted Labour Code.***

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Public officials.* In its previous comments, the Committee noted the absence of regulations concerning the exercise of the right to organize of magistrates, which was behind the difficulties experienced in the registration of the Trade Union of Magistrates of Burundi (SYMABU). The Committee notes the Government's indication that magistrates in Burundi are subject to the Magistrates' Regulations, which do not contain any legal provisions providing a basis for how magistrates might organize. The Government states that, in order to rectify this regulatory gap, the Minister of Justice is due to set up a committee to revise the regulations, incorporating provisions relating to the exercise of the right to organize. ***The Committee requests the Government to ensure that the above-mentioned committee is established in the near future, to keep it informed of all progress made on the revision of the Magistrates' Regulations in order to ensure that judges enjoy the guarantees provided for by the Convention, and to send a copy of the revised regulations once they have been adopted.***

*Minors.* The Committee previously raised the question of the conformity of section 271 of the Labour Code – which provides that minors under 18 years of age may not join a trade union of their own choosing without the explicit authorization of their parents or guardians – with the Convention. The Committee notes that the Government does not provide any information on this matter in its report. It also notes that COSYBU indicates in its observations that the above-mentioned section is still in force. The Committee recalls that it emphasizes the need to guarantee that minors who have reached the minimum legal age for admission to employment, both as workers and as apprentices, can exercise their trade union rights without parental authorization (see the 2012 General Survey on the fundamental Conventions, paragraph 78). ***The Committee requests the Government to take all necessary steps to amend section 271 of the Labour Code as part of the revision thereof.***

*Article 3. Election of trade union officers.* The Committee recalls that it previously requested the Government to amend section 275(3) of the Labour Code, which provides that persons shall be barred from trade union office if they have been sentenced to more than six months' imprisonment without suspension of sentence, even if their conviction is for an act which does not call into question their integrity and implies no real risk for the performance of trade union duties. The Committee also requested the Government to amend section 275(4) of the Labour Code – which provides that trade union leaders must have belonged to the occupation or trade for at least one year – to make the legislation more flexible by allowing persons who had previously worked in the occupation to stand for office or by lifting this requirement for a reasonable proportion of trade union officers. The Committee welcomes the Government's statement that it recognizes the need to lift the requirement of belonging to the occupation

for a reasonable proportion of trade union officers and that it will hold tripartite discussions on this subject. The Committee also notes COSYBU's indication that the Government has not yet responded to these issues. ***The Committee once again requests the Government to take all necessary steps to amend section 275(3) and (4) of the Labour Code as part of the revision thereof. Hoping that it will be in a position to observe progress in this regard in the near future, the Committee requests the Government to keep it informed of the results of tripartite discussions on the subject of belonging to the occupation and any follow-up measures adopted.***

*Right of organizations to organize their activities and to formulate their programmes in full freedom. Procedures for the exercise of the right to strike.* The Committee previously urged the Government to adopt and send the text of the regulations implementing the Labour Code in relation to procedures for exercising the right to strike. It also requested the Government to amend section 213 of the Labour Code, which provides that strikes are lawful when they are called with the approval of a simple majority of the employees of the workplace or enterprise (if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level). The Committee also noted that a decree-law prohibiting the exercise of the right to strike and also the right to demonstrate throughout the national territory during election periods had still not been repealed following the elections (trade unions must be able to fully exercise their right to organize in full freedom without interference from the public authorities). The Committee notes that the Government does not provide any information on these issues in its report. It also notes that COSYBU, which indicates that the Government has still not responded, continues to call for the adoption of the regulations implementing the Labour Code in relation to procedures for exercising the right to strike. ***Recalling once again the importance of the right to strike for promoting and defending the interests of unionized workers, the Committee expects the Government to take the necessary steps in the near future to adopt and communicate the regulations implementing the Labour Code in relation to procedures for exercising the right to strike, to amend section 213 of the Labour Code and to repeal the above-mentioned decree-law.***

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

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

The Committee notes the Government's report received during the first half of 2020, as well as the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the Trade Union Confederation of Burundi (COSYBU), received in August 2019 and August 2020, relating to various elements examined in the context of the present comment, and also the Government's reply in this regard. The Committee notes that the observations of COSYBU also refer to the alleged discrimination arising from non-application of an arbitration award to workers belonging to the Union of Workers of the University of Burundi (STUB). ***The Committee requests the Government to send its comments on this matter.***

*Draft revised Labour Code.* The Committee notes the Government's indication that a draft revised Labour Code has been submitted to Parliament for adoption. ***The Committee requests the Government to provide information on any new developments regarding the draft revised Labour Code and to send a copy of it once it has been adopted.***

*Articles 1, 2 and 3 of the Convention. Adequate protection against acts of anti-union discrimination and interference.* In its previous comments, the Committee emphasized the non-dissuasive nature of the sanctions established by the Labour Code for acts of anti-union discrimination and interference and expressed the hope that the respective provisions would be amended as part of the revision of the Labour Code. The Committee notes the Government's indication that effect is given to the principles protected by the Convention in sections 268 and 269 of the Labour Code and in sections 5 and 6 of Act No. 1/28 of 23 August 2006 issuing the General Civil Service Regulations. The Government also emphasizes that the protection of workers against dismissal features in the draft of the new Labour Code being drawn up. The Committee also notes that COSYBU in its observations: (i) calls for the adoption of additional measures to ensure the protection that is particularly necessary for trade union leaders; (ii) calls for the inclusion in the national legislation of specific provisions against acts of anti-union interference and discrimination, of quick appeal procedures, and of effective penalties that act as a deterrent; (iii) states that, in the security services and telecommunications sectors, trade union leaders are constantly victims of acts of intimidation leading to suspensions, dismissals and imprisonment; and (iv) in the education and health sectors, acts of interference are practised by certain supervisors in the administration, who either give their backing to trade unions or interfere in their management. The Committee recalls that the protection afforded to workers and trade union leaders against acts of anti-union discrimination and acts of interference is an essential aspect of freedom of association, as such acts may result in practice in a denial of freedom of association and of the guarantees laid down in Convention No. 87, and also consequently of collective

bargaining (see the 2012 General Survey on the fundamental Conventions, paragraph 167). ***The Committee expects that the Government will take all the necessary steps to ensure adequate protection against all acts of anti-union discrimination and interference, whether it involves dismissals or any other prejudicial acts, especially by providing for quick appeal procedures and sufficiently dissuasive sanctions in the draft revised Labour Code being adopted, and requests the Government to provide information on any developments in the situation in this respect. The Committee also requests the Government to send its comments on the observations of COSYBU alleging acts of intimidation in the security services sector and acts of interference in the education and health sectors.***

*Article 4. Promotion of collective bargaining.* In a previous comment, the Committee asked the Government to send its comments on an allegation from the International Trade Union Confederation (ITUC) that section 227 of the Labour Code enables the authorities to interfere in collective bargaining and section 224 of the Code authorizes collective agreements with non-unionized workers. The Committee notes that the Government has still not provided any reply in this regard and that COSYBU, in its observations of 2020, also calls for the two above-mentioned sections to be revised. ***The Committee once again requests the Government to send its comments on this subject and expresses the hope that the revised Labour Code will give full effect to Article 4 of the Convention.***

The Committee previously asked the Government to provide information on the specific measures taken to promote collective bargaining, and to supply practical data on the status of collective bargaining in the country. The Committee notes the Government's indication that it has facilitated and supported the setting up of social dialogue committees in the following branches of activity: health, education, transport, justice, agriculture, information and communication technologies, commerce, energy and mining, public works, agri-industry, security services, hotels and tourism, and art and handicrafts. It notes that these committees, whose task is to undertake social dialogue and launch collective negotiations, are bipartite and each composed of ten members (five employers and five workers) and are present in the 18 provinces of Burundi. The Committee also notes that the Government emphasizes that in the private sector certain enterprises have launched negotiations with representatives of the employees in the context of human resources management reforms. The Committee further notes that COSYBU: (i) states that since 2012 collective agreements have not been concluded in all sectors; (ii) denounces the suspension of bonuses and allowances linked to the economy which are established by the national inter-occupational collective agreement of 3 April 1980 regulating long-service bonuses; and (iii) asserts that an agreement signed with the Government on 23 February 2017 to re-establish the regulatory texts concerning the exercise of freedom of association and collective bargaining has still not been implemented. The Committee also notes the Government's indication in its reply that it is currently examining ways and means to implement the agreement signed on 23 February 2017. ***Recalling that mutual respect for commitments made in collective agreements is an important element in the right of collective bargaining, the Committee requests the Government to provide information on any developments concerning the implementation of the agreement of 23 February 2017 and to respond to the allegations of COSYBU concerning the suspension of bonuses and allowances linked to the economy which are established by the national inter-occupational collective agreement of 3 April 1980. Also noting the divergent appraisals of the Government and COSYBU regarding the implementation in practice of the right to engage in collective bargaining, the Committee also requests the Government to continue providing information on measures to encourage and promote collective bargaining and their impact. The Committee further requests the Government to continue providing detailed information, including in the private sector, on collective agreements which have been concluded, the sectors concerned and the number of workers covered.***

*Articles 4 and 6. Right of collective bargaining for public servants not engaged in the administration of the State.* In its previous comments, the Committee asked the Government to continue providing information on the measures taken or envisaged to ensure that organizations of public servants not engaged in the administration of the State have at their disposal mechanisms which allow them to bargain collectively on the terms and conditions of their employment, including wages. The Committee also asked the Government to provide information on any agreement on conditions of work and employment, including wages, concluded in the public sector. The Committee notes the Government's indications that: (i) in the context of drawing up the national wage policy, the Ministry of Labour has set up a tripartite committee, which includes representatives of all public servants, including those not engaged in the administration of the State, to steer and give technical guidance to this work; (ii) the principal agreement concluded in the public sector is concerned with granting the wage adjustment allowance, it was signed at the end of 2015 and it came into force in 2018 for public servants not engaged in the administration of the State; and (iii) collective agreements covering more than 80 per cent of public servants have been concluded in the health, education and justice sectors. The Committee also notes that COSYBU asks: (i) for the committee on the drafting of the national wage policy to be given fresh impetus to finalize this policy; and (ii) for the relevant legal provisions to be amended so that organizations of public servants and public employers not engaged in the administration of the State can negotiate their pay and other conditions of work. ***Noting the divergent appraisals of the Government and COSYBU regarding the access of public***

***servants not engaged in the administration of the State to the right of collective bargaining, the Committee requests the Government to provide detailed information on the measures taken to promote collective bargaining for this category of workers, including in the context of the national wage policy. The Committee also requests the Government to provide information on all collective agreements concluded in the public sector.***

## Cambodia

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 21 September 2020, alleging that the amendments to the Law on Trade Unions (LTU) adopted in December 2019, which are examined in this comment, failed to bring the LTU into conformity with the Convention.

The Committee further notes the observations of Education International received on 1 October 2020, denouncing the arrest of five trade unionists in connection with their activities, including the President of the Cambodian Confederation of Unions (CCU), as well as an attack against the President of the Cambodian Independent Teachers' Association (CITA) on 10 August 2020. ***Recalling that trade union rights can only be exercised in a climate that is free from violence and intimidation, and within the framework of a system that guarantees the effective respect of civil liberties, the Committee requests the Government to provide its comments on these serious allegations.***

The Committee proceeded with the examination of the application of the Convention on the basis of the observations received from the social partners this year (see legislative issues), as well as on the basis of the information at its disposal in 2019.

The Committee takes note of the comments of the Government in reply to the 2016 and 2017 ITUC observations, including the indication that the provisions in the draft Law on Minimum Wage that had been questioned by the ITUC as prohibiting legitimate trade union activities were subsequently removed from the promulgated law. The Committee further notes the observations submitted by the ITUC received on 1 September 2019, concerning matters examined in this comment, as well as alleging violent repression of strikes by hired criminals and the detention of union leaders organizing strike action in the garment sector. ***The Committee requests the Government to provide its comments in this respect.***

#### Trade union rights and civil liberties

*Murders of trade unionists.* With regard to its long-standing recommendation to carry out expeditious and independent investigations into the murders of trade union leaders Chea Vichea and Ros Sovannareth (in 2004) and Hy Vuthy (in 2007), the Committee notes that the Government indicates once again that the relevant ministries and institutions have been working on the cases but that their long-standing nature, coupled with the lack of cooperation from Mr Vichea's family, renders the investigation even more complicated. The Government further states that in order for the investigation to conclude, all relevant parties, especially the families of victims, need to cooperate fully, and indicates that the investigation was brought up to the annual meeting of the National Commission on Reviewing the Application of the International Labour Conventions ratified by Cambodia (NCRILC). The Committee must express once again its ***deep concern*** with the lack of concrete results concerning the investigations, even bearing in mind the suggested lack of cooperation of victims' families, and the Committee refers to the conclusions and recommendations of the Committee on Freedom of Association in its examination of Case No. 2318 (see 391st Report, October 2019). ***Recalling the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes, the Committee urges once again the competent authorities to take all necessary measures to expedite the process of investigation.***

*Incidents during the January 2014 demonstrations.* Concerning the trade unionists facing criminal charges in relation to incidents during the January 2014 demonstrations, the Committee notes with ***interest*** the Government's indication that the six trade union leaders that had initially been sentenced to a suspended three years and six months imprisonment and collective payment of compensation equivalent to US$8,750 were acquitted of all charges on 28 May 2019 by the Court of Appeal after the initial judgment was appealed with legal support from the Ministry of Labour and Vocational Training (MLVT) and the Ministry of Justice (MoJ). The Committee further notes the Government's indication that: (a) as to other trade unionists under judicial procedures, the MLVT and the MoJ have established a working group, which requested trade unions to provide information on their cases, so that the two ministries could follow up with the court in order to expedite the settlement (80 per cent of the criminal cases against trade unionists have been settled so far); (b) out of a total of 121 criminal cases identified as involving trade unionists, 71 cases have been settled (with verdicts issued for 27 cases, filing without processing by the prosecutor for 13 cases and charges dropped by the investigating judge for 23 cases); 33 cases remain under judicial proceedings and 17 cases are not related to freedom of association or labour rights but

have also been settled; and (c) out of the 19 civil cases, 11 have been settled (verdicts issued for nine cases and charges dropped for two cases), and eight cases are under court proceedings (two of which are not related to freedom of association or labour rights). ***The Committee requests the Government to continue providing information on these procedures, in particular on any verdicts issued, as well as undertaking all necessary efforts to ensure that no criminal charges or sanctions are imposed in relation to the peaceful exercise of trade union activities.***

*Training of police forces in relation to industrial and protest action.* In its previous comment, recalling that the intervention of the police should be in proportion to the threat to public order and that the competent authorities should receive adequate instructions so as to avoid the danger of excessive force in trying to control demonstrations that might undermine public order, the Committee encouraged the Government to consider availing itself of the technical assistance of the Office in relation to the training of police forces, with a view, for example, to the development of guidelines, a code of practice or a handbook on handling industrial and protest action. The Committee notes the Government's indication that: (i) the MLVT has cooperated with the Ministry of Interior to produce documents for the training of police forces to ensure full respect of trade union rights; (ii) in December 2018, the MLVT sent a letter to the ILO requesting technical assistance to provide a training course for police forces; and (iii) in April 2019, its representatives met with ILO officials to prepare the training for the national police and agreed to organize four courses of training of trainers, in cooperation with the Ministry of Interior and the Officer of the High Commissioner for Human Rights to take place in the second semester of 2019. ***The Committee requests the Government to provide information on developments in this regard, including with respect to completion of the four training courses, their duration, number of participants, and particular subjects covered.***

## Legislative issues

The Committee takes due note of the information provided by the Government on the process to prepare amendments to the LTU in consultation with the social partners. The Government indicates that: (i) the MLVT submitted a first draft amendment for tripartite consultation; (ii) workers' and employers' organizations submitted written comments; (iii) two national tripartite consultative workshops took place on 25 April 2019 and on 2 August 2019, with the technical support of the ILO and during which the social partners could provide additional inputs; (iv) on 9 August 2019 a final draft was submitted to the Council of Ministers, with a view to its further submission to the National Assembly for review and adoption by the end of 2019; and (v) in the meantime, a number of regulations *(prakas)* have been adopted to simplify the implementation of the LTU, including on the subjects of registration of unions, federations and confederations. The Committee observes that the draft law was approved by the National Assembly on 26 November 2019 and promulgated on 19 December 2019.

*Article 2 of the Convention. Rights of workers and employers, without distinction whatsoever, to establish and join organizations.* In its previous comments the Committee urged the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly. The Committee notes that, while in the Progress Report for the Roadmap on Implementation of ILO Recommendations concerning Freedom of Association submitted to the ILO in June 2019, the Government had indicated that it continued to organize consultative workshops and to finalize draft legislative amendments, no amendments have been drafted in this respect. In its report to the Committee the Government only reiterates that it considers that freedom of association is guaranteed to all workers through two pieces of legislation: (i) the LTU, applicable to the private sector – including domestic workers (the amendments will introduce an explicit reference to domestic workers in section 3 of the LTU on the scope of the law), teachers who are not civil servants, and workers in the informal economy meeting the LTU's requirements to form a union; and (ii) the Law on Associations and Non-Governmental Organizations (LANGO) providing for the right to organize of civil servants, including teachers who now have such status.

The Committee must recall once again that some provisions in the LANGO contravene freedom of association rights of civil servants under the Convention, as it lacks provisions recognizing civil servants' associations' right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, and the right to affiliate to federations or confederations, including at the international level, and subjects the registration of these associations to the authorization of the Ministry of Interior. In addition, the Committee had noted that workers' organizations and associations expressed deep concern at: (i) the lack of protection of teachers' trade union rights (referring in particular to sanctions and threats to teachers seeking to organize); and (ii) the difficulties faced by domestic workers and workers in the informal economy in general seeking to create or join unions, since the LTU provides for an enterprise union model, whose requirements are often very difficult to meet by these workers, and does not allow for the creation of unions by sector or profession. Similarly, the Committee had taken note of the ITUC's claim that the absence of any structure for sectoral representation results in the exclusion from the right to organize of

hundreds of thousands of workers in the informal sector. ***Regretting the continuing absence of progress in this respect, the Committee must once again urge the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly. The Committee further encourages the Government to promote the full and effective enjoyment of these rights by domestic workers and workers in the informal economy and, to this effect, submit to tripartite consultations the possibility of allowing the formation of unions by sector or profession.***

*Article 3. Right to elect representatives freely. Requirements for leaders, managers, and those responsible for the administration of unions and of employer associations.* In its previous comments, the Committee had requested the Government to take the necessary measures to amend sections 20, 21 and 38 of the LTU – requiring those wishing to vote, to stand as a candidate for election, or be designated to leadership or management positions in unions or employer associations to meet a minimum age requirement (18), minimum literacy requirements and make a declaration that they have never been convicted for any criminal offence. On the one hand, the Committee notes with ***satisfaction*** that the 2019 amendments to the LTU removed the requirements of making a declaration that they have never been convicted of any criminal offense and, as to Khmer nationals, the literacy requirement. However, the Committee observes that the amended sections 20 and 21 still impose literacy requirements on foreign nationals. Moreover, the Committee observes that the 2019 amendments to the LTU did not modify section 38, on the election of worker representatives in the enterprise or establishment. As the Committee had noted in its previous comments, this section presents similar issues of compatibility with the Convention. ***Recalling its previous comments the Committee requests the Government to take the necessary measures to amend sections 20, 21 and 38 of the LTU to remove the requirement to read and to write Khmer from the eligibility criteria of foreigners. The Committee requests the Government to provide information on any developments in this respect.***

*Article 4. Dissolution of representative organizations.* In its previous comments the Committee had requested the Government to amend paragraph 2 of section 28 of the LTU, providing that a union is automatically dissolved in the event of a complete closure of the enterprise or establishment. The Committee observes that the 2019 amendments to the LTU retained under paragraph 2 of section 28 the automatic dissolution of a union in the event of a complete closure of its enterprise or establishment, but included an additional condition: complete payment of workers' wages and other benefits. In this respect, the Committee considers that, while the payment of wages and other benefits may be one of the reasons why a union may have a legitimate interest to continue to operate after the dissolution of the enterprise concerned, there may be other legitimate reasons for it to do so (such as defending other legitimate claims). ***Recalling that the dissolution of a workers' or employers' organization should only be decided under the procedures laid down by their statutes, or by a court ruling, the Committee requests once again the Government to take the necessary measures to amend section 28 of the LTU accordingly by fully removing its paragraph 2.***

*Grounds to request dissolution by Court.* In its previous comments the Committee had requested the Government to take the necessary measures to amend section 29 of the LTU, which affords any party concerned or 50 per cent of the total of members of the union or the employer association the right to file a complaint to the Labour Court to request a dissolution. Observing that the 2019 amendments to the LTU did not modify the provision in question, and noting that members can always decide to leave the union, the Committee must recall once again that the manner in which members may request dissolution should be left to the organization's by-laws. ***The Committee once again requests the Government to take the necessary measures to amend section 29 of the LTU to leave to the unions' or employers' associations own rules and by-laws the determination of the procedures for their dissolution by their members.***

The Committee had further requested the Government to take the necessary measures to remove paragraph (c) of section 29 of the LTU, which provided that a union or an employers' association shall be dissolved by the Labour Court in cases where leaders, managers and those responsible for the administration were found guilty of committing a serious act of misconduct or an offence on behalf of the union or the employer association. The Committee had recalled that if it is found that trade union officers have committed serious misconduct or offences through actions going beyond the limits of normal trade union activity – including actions carried out on behalf of the trade union – they may be prosecuted under the applicable legal provisions and in accordance with ordinary judicial procedures, without triggering the dissolution of the trade union and depriving it of all possibility of action. The Committee observes with ***satisfaction*** that the 2019 amendments removed from the LTU the above-mentioned paragraph.

### Application of the Convention in practice

*Independent adjudication mechanisms.* In its previous comments the Committee had recalled the importance of ensuring the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes, as well as to address the serious concerns raised on the independence of the judiciary and its impact on the application

of the Convention. The Committee had welcomed the Government's commitment to strengthen the Arbitration Council (AC) and trusted that the AC would continue to remain easily accessible and to play its important role in the handling of collective disputes, and that any necessary measures would be undertaken to ensure that its awards, when binding, are duly enforced. The Committee notes that the Government informs that it revoked the draft law on procedure of the labour courts and further notes with ***interest*** that the MLVT agreed to continue to provide financial support to the AC and study the possibility and launch a pilot on the settlement of individual labour rights disputes by the AC in 2020. ***The Committee requests the Government to continue to provide information in this respect, including as to any measures undertaken to ensure that the AC awards, when binding, are duly enforced.***

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

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

The Committee notes the observations of the ITUC, received on 21 September 2020, alleging that the December 2019 amendments to the Trade Unions Law failed to bring it in conformity with the Convention and arguing in particular that anti-union discrimination sanctions remain far too low to be dissuasive. ***The Committee requests the Government to provide its comments in this respect.***

Not having received other supplementary information, the Committee reiterates its comments adopted in 2019 and reproduced below.

The Committee notes the observations of the International Trade Union Confederation (ITUC) dated 1 September 2019 referring to matters examined in this comment.

The Committee takes note of the comments of the Government in reply to the 2016 and 2017 ITUC observations. Concerning the allegations of extended use of short-term contracts to terminate employment of trade union leaders and members and weaken active trade unions, the Government states that the Law on Trade Unions (LTU) provides remedies for both dismissal or non-renewal of fixed-term contracts due to anti-union discrimination and, if verified, the labour inspectors instruct the employer to reinstate the workers or impose a substantial fine. The Government adds that, to avoid misinterpretation of legal provisions concerning fixed-term contracts, the Ministry of Labour and Vocational Training (MLVT) conducted consultations with the social partners and other actors, such as the Arbitration Council, and that a common understanding was reached that the maximum duration of fixed-term contracts would be four years and, if exceeding this maximum period, the contract would be considered as having unfixed duration. This was reflected in an Instruction on determination of the type of employment contract, issued by the MLVT on 17 May 2019. ***While taking due note of the information provided, the Committee requests the Government to ensure that all measures are taken to monitor, in consultation with the social partners, that fixed-term contracts are not used for anti-union purposes, including through their non-renewal, and to continue to provide information in this respect.***

*Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination.* For many years, several workers' organizations, in particular the ITUC – including in its most recent observations, have been denouncing serious and numerous acts of anti-union discrimination in the country. The Committee notes that the Government indicates in this regard that the MLVT: (i) issued an administrative letter on 31 May 2019 to all employers and their associations to ensure strict and effective implementation of the provisions relating to anti-union discrimination; (ii) invited employers' representatives from 50 companies to disseminate information on the special protections against anti-union discrimination; and (iii) met with the representative of the Cambodia Labour Confederation (CLC) on two different occasions (13 June and 18 July 2019) to follow-up on its 44 cases before the courts (the Government informs that 11 of these were resolved with acquittal of charges and that the MVLT is working closely with the Ministry of Justice to review the remaining cases). While welcoming the steps undertaken for the effective implementation of the protections against anti-union discrimination, the Committee observes that, other than the reference to two meetings with the CLC, it has not received more detailed information on the numerous and grave allegations of anti-union discrimination laid out in previous observations of workers' organizations. ***The Committee requests the Government to provide detailed information on the handling of the allegations of anti-union discrimination laid out in the observations of the ITUC in 2014, 2016 and 2019, and recalls the need to take all necessary measures to ensure that anti-union discrimination allegations are investigated by independent organs that enjoy the confidence of the parties and that, whenever such allegations are verified, adequate remedies and sufficiently dissuasive sanctions are applied.***

Furthermore, in its previous comments, the Committee urged the Government to ensure that national legislation provided adequate protection against all acts of anti-union discrimination, such as dismissals and other prejudicial acts against trade union leaders and members, including sufficiently dissuasive sanctions. The Committee had taken note, in this respect, of the ITUC's observations that penalties provided for under the LTU for anti-union practices by employers were too low (a maximum of 5 million Cambodian riels (KHR), equivalent to US$1,250) and may not be sufficiently dissuasive. The

Committee was of the view that fines for unfair labour practices provided for in the LTU may be a deterrent for small and medium-sized enterprises, but would not appear to be so for high-productivity and large enterprise cases. The Committee had thus invited the Government to assess, in consultation with the social partners, the dissuasive nature of sanctions in the LTU or any other relevant laws. The Committee notes that the Government replies by affirming that the existing legal mechanisms set out adequate protection against anti-union discrimination. The Government indicates that: (i) in addition to the application of the provisions and remedies in the LTU concerning anti-union discrimination (chapter 15), the LTU itself acknowledges (section 95) that other criminal laws may be applied to punish these actions (violence and discrimination against worker unions being criminal offences under sections 217 and 267 of the Penal Code) and that the employer could thus even face imprisonment, for example if the actions entailed violence; (ii) in addition to the fines imposed by the LTU, those affected can also claim compensation; (iii) the MLVT has never received complaints or grievances from trade unionists regarding existing sanctions; and (iv) the Government is committed to further strengthening the capacity of labour inspectors and raising the awareness of workers on their rights. The Committee observes, on the other hand, that, while several consultation meetings were held on the review and amendment of the LTU, the Government does not indicate that, as recommended by the Committee, these tripartite fora were used to assess the effective and dissuasive nature of the protections against anti-union discrimination. Moreover, the Committee notes that the ITUC observations, in addition to the concrete cases noted above, denounce in general a lack of action and adequate protection against rampant anti-union discrimination. ***The Committee requests the Government to provide detailed statistical information on the application of the different mechanisms to protect against anti-union discrimination, including as to sanctions and other remedies effectively imposed, for example reinstatement or compensation. The Committee further requests the Government to assess, in light of such data, and in consultation with the social partners, the appropriateness of existing remedies, in particular the dissuasive nature of sanctions; and to provide information on any development in this regard.***

*Article 4. Recognition of trade unions for purposes of collective bargaining.* In its previous observation, noting that the Government's statement that by lowering the most representative organisation threshold to 30 per cent, the law encouraged the increase of collective agreements, the Committee had invited the Government to assess the impact of the implementation of the LTU by providing statistics on: (a) the number of representative organizations identified based on their having secured at least 30 per cent of workers' support without an election, and the number of collective agreements concluded by these representative organizations; and (b) the number of separate elections organized based on no union having secured 30 per cent support, and the number of collective agreements concluded by the organizations so elected. The Committee notes that the Government provides the following information: (i) the number of representative organizations having secured at least 30 per cent of workers' support without election were four unions in 2018 (all in the garment sector, covering 3,226 workers) and 15 unions in 2019 (11 in the garment sector, covering 11,070 workers and four in the hotel sector, covering 890 workers); and (ii) the number of collective bargaining agreements concluded in 2018 and 2019 was seven (in 2018, four collective bargaining agreements were concluded between the employer and the shop steward; and, in 2019, three collective bargaining agreements between the employer and a most representative status union). The Government indicates that the information concerning point (b) above will be provided in its next report. The Committee further observes that the March 2017 direct contacts mission (DCM) recommended the Government to take the necessary measures, including issuing instructions to the competent authorities, to ensure that most representative status are recognized without delay and without the exercise of arbitrary discretion to workers' organizations or coalitions of organizations meeting the minimum threshold. In this respect, while noting that the Government indicates that it issued an Instruction on the Facilitation for the Most Representative Status Certification and that one of the objectives of the amendments to the LTU is to facilitate the requirements to obtain most representative status, the Committee observes that the number of organizations having secured at least 30 per cent of workers' support without election, as well as the number of collective bargaining agreements concluded, for 2018 and 2019, were very low. ***The Committee requests the Government to keep on providing information on the number of organizations recognized as having the most representative status, and the number of collective agreements in force, indicating the parties that concluded the agreement (in particular, if a most representative union, a bargaining council or a shop steward), the sectors concerned and the number of workers covered by these agreements; as well as information on any additional measures undertaken to address the issues noted by the DCM concerning the recognition of most representative status organizations, and to promote the full development and utilization of collective bargaining under the Convention.***

*Articles 4, 5 and 6. Right to collective bargaining of public servants not engaged in the administration of the State.* In its previous comments the Committee had urged the Government to take the necessary measures, in consultation with the social partners, to ensure that public servants not engaged in the administration of the State, including teachers, who are governed by the Law on the Common Statute of Civil Servants and the Law on Education with regard to their right to organize, enjoy collective bargaining

rights under the Convention. The Committee notes that, in its reply, the Government indicates that civil servants, including teachers, can form associations in accordance with the Law on Associations and Non-Governmental Organizations (LANGO), but does not provide any information on measures to ensure that public servants not engaged in the administration of the State can exercise the right to collective bargaining. ***Regretting the lack of progress in this respect, the Committee urges once again the Government to take the necessary measures, in consultation with the social partners, to ensure that public servants not engaged in the administration of the State, including teachers, enjoy collective bargaining rights under the Convention. The Committee requests the Government to report on any measures taken or envisaged in this regard and recalls that it may avail itself of the technical assistance of the Office.***

## Cameroon

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

The Committee notes the observations on the application of the Convention in practice, submitted by the International Trade Union Confederation (ITUC) on 16September 2020, which contain allegations that the authorities favour non-representative organizations. ***The Government is requested to communicate its comments in that regard.*** The Committee also takes note of the observations of the General Union of Workers of Cameroon (UGTC) received on 5 November 2020 that relate to issues examined in the present comment.

The Committee notes the general information provided by the Government in response to the observations of the International Transport Workers' Federation (ITF), in particular with respect to the suppression by the police of strike action by dockers in the port of Douala in June 2018, and the numerous arbitrary arrests that followed. The Committee notes the Government's statement that the police intervened as a result of violence against non-striking dockers and disturbance of public order. In that regard, the Committee wishes to recall that the authorities should only resort to the use of force in exceptional circumstances and in situations where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances (see the 2012 General Survey on the fundamental Conventions, paragraph 149).

The Committee notes with ***regret*** that the Government has still not provided information in response to the observations of the ITUC of 1 September 2016, concerning repeated police violence against strikers (in the construction sector), as well as interference in trade union elections by the authorities (in the agriculture, construction and health sectors), vandalism on the premises of a trade union and anti-union harassment (banking sector). ***The Committee urges the Government to provide detailed information in respect of all these issues.***

In its previous comments on the failure to register eight public sector teachers' unions subsequent to Education International's (EI) observations of 2016, the Committee had noted, according to the Government, that the situation was linked to the fact that the post of registrar had not been filled. The Government now indicates that, while a registrar of trade unions had been appointed by decree in February 2015, the registration certificates issuance process had been suspended with the aim of "cleaning up the trade union file", an operation which allowed the Government to have a clearer view of the trade union landscape, by sector and branch of activity. ***Recalling that the right to establish trade union organizations must be guaranteed without previous authorization and that any procedure for registration must be a mere formality, the Committee urges the Government to take the measures necessary for the registration of the public sector teachers' organizations.***

*Article 3 of the Convention. Act on the suppression of terrorism.* With reference to its earlier comments relative to the Act on the suppression of terrorism (Act No. 2014/028 of 23 December 2014), the Committee again wishes to draw the Government's attention to the drafting of section 2(1), under which "the death penalty shall be imposed on anyone who [...] commits or threatens to commit any act that may cause death, endanger physical safety, result in bodily injury or property damage or harm natural resources, the environment or the cultural heritage with the intention of (a) intimidating the public, causing a situation of terror or forcing a victim, the Government and/or a national or international organization to carry out or refrain from carrying out a given act, adopting or renouncing a particular position or act according to certain principles; (b) disrupting the normal operation of public services or the delivery of essential public services, or creating a public crisis [...]". The Committee reiterates its ***deep concern*** regarding the fact that some of these situations could apply to acts related to the legitimate exercise of activities by trade unions or employers' representatives in accordance with the Convention. The Committee refers in particular to protest action and strikes that would have direct repercussions for public services. The Committee also recalls that, in light of the penalty that may be imposed, such a provision could be particularly intimidating for trade union or employers' representatives who speak out or take action within the context of their duties. ***While noting the Government's repeated indication that an activity cannot be considered a trade***

***union activity if it is not of such a nature as to discharge the legal functions of trade unions, or if its aim is to spread fear, intimidation and violence, or of it is characterized by the use of arms, and that such activities may be reclassified accordingly by the competent courts, the Committee urges the Government to take the measures necessary to amend section 2 of the Act on the suppression of terrorism to ensure that it does not apply to the legitimate activities of workers' and employers' organizations, which are protected under the Convention. In the meantime, the Committee urges the Government to continue providing information on the measures taken to ensure that: (i) the implementation of this Act does not have harmful consequences on officials and members engaged in their functions, and performing trade union or employer activities pursuant to Article 3 of the Convention; and (ii) the Act is enforced in such a way that it is not perceived as a threat or intimidation towards trade union members or the whole trade union movement.***

*Articles 2 and 5. Legislative reform.* For many years, the Committee has been recalling the need to: (i) amend Act No. 68/LF/19 of 18 November 1968 (under the terms of which the legal existence of a trade union or occupational association of public servants is subject to prior approval by the Minister of Territorial Administration); (ii) amend sections 6(2) and 166 of the Labour Code (which lay down penalties for persons establishing a trade union which has not yet been registered and acting as if the said union had been registered); and (iii) repeal section 19 of Decree No. 69/DF/7 of 6 January 1969 (under the terms of which trade unions of public servants may not affiliate to an international organization without obtaining prior authorization). ***Noting once again with deep regret that, according to the information provided by the Government, the process of revising the Labour Code has still not been completed, the Committee is bound once again to urge the Government to finalize the legislative revision process, without further delay, so as to give full effect to the provisions of the Convention on the above-mentioned points. The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

***[The Government is asked to reply in full to the present comments in 2021].***

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

The Committee takes note of the observations of the International Trade Union Confederation (ITUC), received on 16 September 2020, which concern the application of the Convention in practice, and which are dealt with in the present comment. It also takes note of the observations of the General Union of Workers of Cameroon (UGTC) received on 5 November 2020, which contain allegations of anti-union discrimination against several members of an affiliated organisation (SNEGCBEFCAM) within the National Social Welfare Fund (CNPS). ***The Committee requests the Government to comment on this matter.***

*Articles 1 and 2 of the Convention. Adequate protection against acts of anti-union discrimination and interference.* In its earlier comments, the Committee had noted the observations of the ITUC denouncing anti-union discrimination against trade union leaders and trade unionists in the banking sector, and interference by the employer and the authorities in the elections of a trade union in the agriculture sector. It also noted the 2016 observations of the Cameroon Workers' Trade Union Confederation concerning interference by an enterprise in the activities of a trade union in the wood industry and the dismissal by the enterprise in question of more than 150 workers on the sole grounds of their trade union affiliation. The Committee notes with ***regret*** that the Government has still not provided the information requested and that it restricts itself to indicating that it ensures the promotion of international labour standards in the country. Finally, the Committee notes the ITUC's observations received in September 2020, which contain new allegations of suspensions and arbitrary dismissals of trade union leaders, especially in the brewery sector. ***The Committee once again notes with concern the serious nature of the alleged facts and the persistent denunciations of anti-union practices in numerous sectors. The Committee reminds the Government of its responsibility to take all measures needed to ensure that the competent authorities, in particular the labour inspectorate, carry out the necessary inquiries into the reported cases of anti-union discrimination and interference, to take the corrective measures without delay and issue appropriate sanctions if it is found that the trade union rights provided by the Convention have been violated in certain administrations or enterprises. The Committee urgently requests the Government to provide its comments and detailed information in this regard.***

With reference to the observations received from the UGTC in October 2016 on the worsening of trade union discrimination against the leaders of SNEGCBEFCAM within the CNPS, the Committee notes a court decision handed down in favour of the workers, who had been dismissed, but that the CNPS has appealed the decision. ***The Committee requests the Government to provide all relevant information in this regard.***

*Article 4. Right to collective bargaining in practice.* The Committee notes the information provided by the Government to the effect that since 2017, nine collective agreements have been signed. With reference to its earlier comments, it notes in particular that the revised collective agreement for security services was signed on 7 May 2019. Moreover, the Committee had noted the 2016 observations of the of

the Cameroon Workers' Trade Union Confederation (CSTC) denouncing unilateral appointment by the Ministry of Labour of the workers' representatives in the bargaining committees for national collective agreements, without taking into account the representativeness of the organizations in the sectors concerned. In that regard, the Committee notes the observations of the ITUC, received in September 2020, alleging that unrepresentative organizations are appointed in the institutions, in the place of representative organizations, and that such practices prevent the genuine representation of workers and their interests both in enterprises and in tripartite institutions and social dialogue. ***The Committee requests the Government to comment on the observations of the CSTC and the ITUC, and also to indicate the measures taken by the authorities to encourage and promote collective bargaining, under Article 4 of the Convention, and to specify sectors concerned. The Committee also requests the Government to continue to provide statistical information on the number of collective agreements signed and in force, both in the public and private sectors, also indicating the number of sectors and of workers covered by the agreements.***

## Canada

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government (mainly concerning the Government of Alberta) and the Canadian Labour Congress (CLC) this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes that in its supplementary observations the CLC points out that the COVID-19 pandemic has disproportionately impacted low-income workers and already marginalized groups and has reemphasized the relevance of freedom of association rights and the essential role unions play in providing workers with a voice in their workplace. It further notes the CLC's indication that since the beginning of the pandemic, a large number of non-unionized workers have reached out to unions and begun organizing their workplaces.

*Article 2 of the Convention. Right to organize of certain categories of workers. Province of Alberta.* The Committee recalls that it had previously requested the Government to provide information on the outcome of the technical discussions with respect to the application of the Labour Relations Code (LRC) to agricultural workers, as well on the outcome of the review of the LRC and the Post-secondary Learning Act with respect to architects, dentists, land surveyors, lawyers, doctors, engineers, domestic workers, nursing personnel and higher educational staff in Alberta.

– With respect to nursing personnel, the Committee notes with ***satisfaction*** that following a decision of the Alberta Labour Relations Board, on 25 November 2019, which declared that the exclusion of nursing practitioners from the right to associate was unconstitutional under the Canadian Charter of Rights and Freedoms, the Government passed in July 2020 the Restoring Balance in Alberta's Workplaces Act to remove the exclusion of nurse practitioners from the LRC.
– As to the extension of full associational and collective bargaining rights to academic staff at Alberta's post-secondary institutions, the Committee notes that following the review of the Post-secondary Learning Act, five professions have been included in academic bargaining units, giving them a statutory right to organize and enjoy freedom of association rights.
– Concerning agricultural workers, the Committee notes that in 2018 the Enhanced Protection for Farm and Ranch Workers Act came into force, granting waged, non-family farm and ranch employees the same statutory rights as most of the employees in Alberta including the opportunity to be represented by a bargaining agent. Nevertheless, the Committee notes with ***concern*** the Government's indication that following province-wide consultations with agricultural industry stakeholders, the Alberta Farm Freedom and Safety Act, 2019, reinstated the farm and ranch sector exemption from the LRC, effective in January 2020.
– With regard to provincial public service employees, the Committee notes that the enactment of the Ensuring Fiscal Sustainability Act, in December 2019, amended the Public Service Employee Relations Act (PSERA). This amendment resulted in the exclusion of budget officers, systems analysts, and auditors from the scope of application of the PSERA, which recognizes freedom of association rights to other public service employees.
– Regarding the exclusion of certain categories of professional employees such as architects, dentists, land surveyors, lawyers, doctors and engineers the Government indicates that: (i) in public sector, the PSERA does not totally exclude professional employees (i.e. medical, dental, architectural, and engineering) from the provisions of the legislation and, according to its section 13(2), the Labour Relations Board may direct these employees to be members of a bargaining unit if the majority wishes so; (ii) a review of the Post-secondary Learning Act resulted in five professions (medical,

dental, architectural, engineering and legal) being included in academic bargaining units, as provided under section 58.1(4) of the LRC; and (iii) some categories of professional employees, such as architects, have also the opportunity to be covered under the provisions of the Professions and Occupations Registration Act, which establishes the means by which professional associations in the province manage their affairs and the conduct of their professional members.

– Regarding domestic workers the Government indicates that nothing prevents them from associating and organizing.

***With respect to agricultural workers and budget officers, systems analysts, and auditors working in the public sector, noting the Government's indication that these categories are excluded either from the LRC or from the PSERA, the Committee requests the Government to indicate the manner in which these workers can enjoy their right to organize and all guarantees under the Convention. As regards domestic workers, the Committee requests the Government to specify under which legislative provisions this category of workers may enjoy their right to organize and all guarantees under the Convention. Regarding specific professional categories of workers, such as architects, dentists, land surveyors, lawyers, doctors and engineers, in view of the information provided by the Government, the Committee requests the Government to confirm that all the above categories, from both public and private sector, can exercise all freedom of association rights under the Convention.***

*Province of Ontario.* The Committee notes that the Agricultural Employees' Protection Act (AEPA) was amended in order to expand its scope to ornamental horticulture starting on 3 April 2019. As to the exclusion of agricultural workers from the Labour Relations Act (LRA), the Government once again indicates that the AEPA protects the right of agricultural workers in Ontario to form and join associations. The Committee notes however that, according to the Changing Workplaces Review final report (CWR), commissioned by the Ministry of Labour and released in 2017, the AEPA does not clearly state that such employees have the right to join a trade union and participate in lawful activities, and neither does it provide agricultural workers with the right to strike nor any alternative dispute resolution. The Committee further notes that the Government once again indicates that it does not have any statistics on the number of workers represented by an employee association or trade union. ***Recalling the value of statistical information for assessing the effective implementation in practice of the Convention, the Committee requests the Government to gather and provide information on the number of workers represented by an employee association or trade union under the AEPA. It also requests the Government to take any additional measures to guarantee that agricultural workers enjoy the right in law and in practice to establish and join organizations of their own choosing, as well as other rights recognized in the Convention.*** With respect to the other excluded categories of workers (architects, dentists, land surveyors, lawyers, doctors, engineers, principals and vice-principals in educational establishments, community workers and domestic workers), the Committee had previously noted that the above exclusions of the LRA were going to be considered by the ongoing review of Ontario's labour and employment legislation. In this respect, the Committee notes that despite the recommendations of the Special Advisers leading the CWR with regard to the repeal of those exclusions, no changes were made during the 2016–19 period. The Committee notes, furthermore, the Government's indication that labour laws are not appropriate for non-industrial settings, such as private homes and professional offices. ***While taking due note of the final report of the CWR and the Government's statement on the inadaptability of the labour laws to non-industrial settings, the Committee invites the Government to take all necessary measures, in consultation with social partners, to ensure that the above categories have the right in law and in practice to establish and join organizations of their own choosing, as well as other rights recognized under the Convention.***

*Province of New Brunswick.* The Committee notes that the Government acknowledges the negative effect of excluding domestic workers from the scope of the Employment Standards Act and that consultations were held in September 2016 regarding possible amendments to the aforementioned Act, which encompasses repealing the exclusion. The Government further informs that it is currently conducting a technical review of the Domestic Workers Convention, 2011 (No. 189). ***The Committee hopes that the consultations and the technical review will be finalized in the near future and that all necessary measures will be taken to ensure that domestic workers enjoy the right to organize and other guarantees under the Convention. The Committee requests the Government to keep it informed on any development in this regard.***

*Other provinces. Nova Scotia, Prince Edward Island and Saskatchewan.* With regard to the exclusion of architects, dentists, land surveyors, doctors and engineers, the Committee notes that: (i) in Nova Scotia, although no legislative changes were made, doctors are de facto represented by Doctors Nova Scotia, an association bargaining with the Government on behalf of doctors and residents; (ii) in Prince Edward Island, no information was provided by the Government regarding the above exclusions; and (iii) in Saskatchewan, the above categories are not explicitly excluded from being certified as a bargaining unit and therefore do have the right to organize, for example, lawyers at the provincial Legal Aid Commission are unionized. With regard to the exclusion of domestic workers in Saskatchewan, the Committee notes

the Government's indication that some categories of workers, including domestic workers, face a practical limitation on organizing as a result of the definition of "employer", defined as "an employer who customarily or actually employs three or more employees", with the purpose of ensuring viability of the bargaining unit. ***While noting that nothing impedes architects, dentists, land surveyors, doctors, and engineers from associating and organizing, the Committee requests the Government to specify under which legislative provisions the above-mentioned categories enjoy their trade union rights as well as other rights recognized in the Convention. Regarding the practical limitation to unionization faced by domestic workers, the Committee invites the Government to take all necessary measures, in consultation with social partners, to ensure that domestic workers enjoy, in law and in practice, the right to organize, as well as other rights under the Convention.***

*Article 3. Right of employers' and workers' organizations to organize their activities and to formulate their programmes. Essential services. Economic Action Plan (Bill C-4).* In its previous comments, the Committee had noted that the adoption of the Economic Action Plan Act in 2013 permitted the federal government the exclusive power to determine and designate unilaterally the essential services for the safety and security of the public and impose arbitration as the dispute resolution mechanism in cases where 80 per cent or more of the positions in a bargaining unit were deemed essential. The Committee notes with ***satisfaction*** that on 26 November 2018, Bill C-62 "An Act to Amend the Federal Public Sector Labour Relations Act and Other Acts" received royal assent and, as a result, the employer no longer has the exclusive right to determine which services are essential and designate positions necessary to deliver these services. The Committee further notes that, as a result, when a conciliation/strike has been selected by the bargaining agent as the dispute resolution mechanism in collective bargaining, the employer and the bargaining agent must collectively negotiate essential services and conclude an Essential Services Agreement.

*Province of Saskatchewan. Employment Act.* In its previous observations, the CLC expressed concern that the Saskatchewan Employment Act increased the number of employees not eligible for trade union membership by declaring their job duties confidential. On that occasion, the Committee pointed out that the definition of "employee" excluded anyone exercising authority and performing managerial or confidential functions, and that the term "union", "labour organization" and "strike" were defined in the Act with reference to the term "employee". The Committee notes the Government's indication that there were extensive consultations in 2012 when considering the labour relations sections (Part IV) of the Employment Act and that some provisions in the Act required a review within a revolving ten-year period and therefore another review of the labour relations provision would occur around 2024. The Committee refers to its previous recommendations, in which it reminded the Government that although it is not necessarily incompatible with *Article 2* to deny workers who perform managerial functions or are employed in its confidential capacity to belong to the same trade unions as other workers, this category should not be defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of substantial proportion of their present or potential membership. ***The Committee hopes that the Government will take all appropriate measures in a near future to ensure the review of The Saskatchewan Employment Act, in consultation with social partners, with a view to bringing it into full conformity with the above-mentioned considerations. The Committee also requests the Government to provide information on the number of employees declared "confidential" and thus not eligible for trade union membership, disaggregated by enterprises or branches of employment.***

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

## Central African Republic

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

*Revised Labour Code.* The Committee notes the Government's indication that a draft revised Labour Code has been submitted to Parliament for adoption. As this draft text has not been transmitted to the Office, the Committee is not able to examine the conformity of its provisions with the Convention. ***The Committee requests the Government to provide information on any developments concerning the draft revised Labour Code and to transmit a copy once it has been adopted.***

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

- section 17, which limits the right of foreign nationals to join trade unions by imposing conditions of residence (two years) and reciprocity;
- section 24, which limits the right of foreign nationals to be elected to trade union office and executive functions by imposing a condition of reciprocity;
- section 25, which renders non-eligible for trade union office persons sentenced to imprisonment, persons with a criminal record or persons deprived of their right of eligibility under national law, even

where the nature of the relevant offence is not prejudicial to the integrity required for trade union office;
– section 26, under which the union membership of minors under 16 years of age may be opposed by parents or guardians despite the minimum age for admission to employment being 14 years under section 259 of the Labour Code; and
– section 49(3), under which no confederation may be established without the prior existence of occupational or regional federations.

The Committee notes the Government's indication that the Committee's requests have been taken into account within the tripartite revision process of the Labour Code, with the exception, it appears, of that relating to section 26. ***The Committee hopes that the revised version of the Labour Code, as adopted by Parliament, will ensure full conformity of all the provisions described above with the requirements under the Convention, and requests the Government to indicate all progress achieved in this regard.***

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

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

*Draft revised Labour Code.* The Committee notes the Government's indication that the draft revised Labour Code has been submitted to Parliament for adoption and that the Government's replies to the Committee's previous requests refer to the content of the draft Labour Code and several of its articles. As the text of this draft has not been transmitted to the Office, the Committee is not in a position to examine the conformity of its provisions with the Convention. ***The Committee requests the Government to provide information on any developments concerning the draft revised Labour Code and to transmit a copy once it has been adopted.***

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

The Committee notes that, according to the Government, the Committee's comments on protection against acts of interference were not incorporated into specific implementing regulations but were eventually taken into account in the Bill issuing the revised Labour Code, particularly in sections 31 to 45. ***The Committee requests the Government to provide detailed information on the progress achieved at the legislative level aimed at expanding protection against acts of interference and to communicate the content of the provisions in question once they have been adopted by Parliament.***

*Article 4. Promotion of collective bargaining. Section 40 of the Labour Code.* In its previous comments, the Committee noted that, in accordance with section 40 of the Labour Code, collective agreements must be discussed by the delegates of employers' and workers' organizations belonging to the occupation or occupations concerned. Having also observed that no provision of the Labour Code appears to explicitly recognize the right of federations and confederations to conclude collective agreements, the Committee requested the Government to provide copies of collective agreements negotiated and concluded by federations or confederations.

The Committee notes the Government's indication that section 41 of the Bill issuing the revised Labour Code charges the federations' representatives with assisting trade union delegates in negotiating the collective agreements based on occupation. ***Recalling that the level of bargaining should normally be a matter for the social partners themselves, the Committee requests the Government to specify whether, beyond the function of assisting the trade union delegates mentioned by the Government, the new provisions of the revised Labour Code explicitly recognize the right of federations and confederations to themselves conclude collective agreements, and to communicate, where relevant, copies of all collective agreements negotiated and concluded by the federations and confederations.***

*Sections 197 and 198 of the Labour Code.* For several years, the Committee has been drawing the Government's attention to the fact that, under the terms of sections 197 and 198 of the Labour Code, representatives of trade union organizations and occupational groupings of workers (non-unionized) are on an equal footing in relation to collective bargaining, even though the negotiation of collective agreements by occupational groupings of workers should only be possible where no trade union exists. ***Regretting the absence of information on this matter, the Committee trusts that the current draft reformed Labour Code will finally contain provisions to ensure that occupational groupings of workers can only negotiate collective agreements with employers where no trade union exists in the bargaining units concerned. The Committee requests the Government to provide information in this regard.***

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

***Regretting, once again, the absence of information in this regard and recalling that, by virtue of the principle of the promotion of free and voluntary collective bargaining set out in Article 4 of the Convention, recourse to compulsory arbitration in the case of disagreement between the parties to collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (Article 6 of the Convention), essential services in the strict sense of the term or in the event of an acute national crisis, the Committee requests the Government to provide information on the progress achieved at the legislative level in this regard.***

*Articles 4 and 6. Right to collective bargaining of public servants not engaged in the administration of the State. Section 211 of the Labour Code.* In its previous comments, the Committee noted that, under section 211 of the Labour Code, the possibility of concluding collective agreements in the public sector concerns only personnel in public services, enterprises and establishments not governed by specific conditions of service and requested the Government to specify to what extent, and based on which text, public servants not engaged in the administration of the State who are subject to specific conditions of service enjoy the right to collective bargaining. The Committee recalls that, in accordance with Articles 4 and 6 of the Convention, public servants not engaged in the administration of the State, a category that includes employees in public enterprises, employees in municipal services and employees in other decentralized bodies, public sector teachers and employees of the public transport sector, must be accorded the right to collectively negotiate their conditions of work and employment. ***The Committee requests the Government to specify, firstly, the list of public services and establishments not subject to specific legislative or regulatory conditions of service and, secondly, whether, in law or practice, the public servants subject to such conditions of service can participate in genuine mechanisms to collectively negotiate their conditions of work and employment. The Committee also requests the Government to indicate whether the provisions of section 211 are affected by the draft revised Labour Code submitted to Parliament for adoption and to provide any relevant information in this regard.***

*Right to collective bargaining in practice.* The Committee notes the information provided by the Government that several collective agreements have been identified for a possible review, such as the 1994 collective agreement on logging and the 1961 collective agreement on the catering industry. ***The Committee invites the Government to continue providing information on the ongoing review processes specifying the manner in which these are initiated and carried out. The Committee requests the Government to indicate the measures aimed at encouraging and promoting collective bargaining, in accordance with Article 4 of the Convention, and to specify the sectors concerned. The Committee also requests the Government to provide statistical information on the number of collective agreements concluded and in force, in both the public and private sectors, and to indicate the sectors and number of workers covered by these agreements.***



## Chad

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, which allege violations of the trade union rights in law and in practice, as well as the Government's response thereto, dated 11 October 2019.

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature. It also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2016, relating to: (i) the legal procedures governing the right to strike; (ii) cases of serious violations of trade union and fundamental rights; and (iii) the determination of essential services. ***The Committee requests the Government to provide its comments in this regard.***

*Articles 2 and 3 of the Convention. Labour Code.* In its previous comments, the Committee requested the Government to take measures to amend section 294(3) of the Labour Code, under the terms of which minors under 16 years of age may join a union, unless their father, mother or guardian objects, with a view to recognizing the trade union rights of minors who have reached the statutory minimum age to enter the labour market in accordance with the Labour Code (14 years), either as workers or apprentices, without the intervention of their parents or guardians. The Committee also drew the Government's attention to the need to take the necessary measures to amend section 307 of the Labour Code, to ensure that monitoring by the public authorities of trade union finances does not go beyond the obligation of organizations to submit periodic reports. The Committee noted the Government's indication that this provision has never been applied and that it was removed in the draft revision of the Labour Code. The Committee notes the Government's statement that the concerns of the Committee have been taken into account in the revision of the Act issuing the Labour Code, even though the latter has not yet been promulgated. ***The Committee trusts that the Labour Code will be promulgated in the near future and that it will give full effect to the provisions of the Convention on the points recalled above. It requests the Government to provide a copy of the text as adopted.***

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

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

## Chile

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020) relating to the measures adopted in the context of the COVID-19 pandemic with regard to the application of the Convention. In this respect, the Committee welcomes the measures indicated by the Government with a view to extending the mandates of trade union executives during the state of emergency (with the possibility for the organizations to elect their representatives if they considered that the conditions existed for holding elections), and to ensuring that workers engaged in telework are informed of the existence of unions in the enterprise, and other measures to facilitate the action and consultation of workers' organizations on measures related to the pandemic, such as their participation in agreements for the reduction of working hours as a consequence of the health emergency, and their capacity to defend their members in the event of any flaws in the suspension of employment relations.

The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 15 September 2020, alleging the violent repression of the protest against an anti-union reform at the end of 2019, including the temporary detention and injuries suffered by various trade union leaders, as well as the attempt to break into the headquarters of the Single Central Organization of Workers of Chile (CUT). The Committee also notes the observations of the CUT, received on 6 October 2020, also alleging limitations on the exercise of the right to demonstrate and on trade union activities, and the arbitrary and unjustified detention of 24 trade union leaders in several cities, as well as the death of a trade union leader of artisanal fishers (challenging the official version of suicide as the cause of his death), raids on and attempts to enter trade union premises (in particular the CUT headquarters, also alleged by ITUC), and spying on and monitoring trade union leaders. ***The Committee requests the Government to provide its comments on these serious allegations.***

The Committee notes that, as to the complaint made under article 26 of the ILO Constitution alleging failure to comply with this and other ILO Conventions by the Republic of Chile, made by a Worker delegate to the International Labour Conference in 2019, the Governing Body: (i) decided not to refer the matter to a Commission of Inquiry and to close the procedure under article 26; and (ii) invited the Government to continue reporting to the ILO regular supervisory system on measures taken to apply in law and practice the Conventions concerned.

As to other pending matters, the Committee reiterates the content of its previous comments adopted in 2019 and reproduced below.

The Committee notes the observations on the application of the Convention in law and practice (including allegations of violations in the public, food, transport and copper sectors) provided by the following organizations: the National Association of Fiscal Employees (ANEF), received on 29 August 2019; the Confederation of Copper Workers (CTC), the General Confederation of Public and Private Sector Workers (CGTP), and the World Federation of Trade Unions (WFTU, taking up the observations of the CGTP), all received on 30 August 2019; the International Trade Union Confederation (ITUC), received on 1 September 2019; as well as the observations of the Federation of Workers' Unions of Chile (FESINTRACH), received on 2 September 2019, the No. 1 Promoter CMR Falabella Enterprise Union, received on 20 September 2019, and the Single Central Organization of Workers of Chile (CUT), received on 26 October 2019. ***The Committee requests the Government to provide its comments in this regard.*** Noting that the Government has not replied to the various requests made in its previous comments, including with regard to the multiple observations made by social partners in 2016, the Committee trusts that it will receive the missing information in the next report.

*Articles 2 and 3 of the Convention. Legislative matters not covered by the reform of the Labour Code.* In its previous comment, while noting with satisfaction the amendment or repeal of various provisions of the Labour Code which were not in conformity with the Convention, the Committee observed that the following provisions had not yet been brought into conformity with the Convention:

– Amendment of article 23 of the Political Constitution, which provides that the holding of trade union office is incompatible with active membership of a political party and that the law shall establish penalties for trade union officials who engage in party political activities. In its previous comments, the Committee welcomed the submission of a draft constitutional amendment in October 2014 to remove these restrictions, but noted that the draft had not been approved.
– Amendment of section 48 of Act No. 19296, which grants broad powers to the Directorate for Labour for the supervision of the accounts and financial assets and property of associations. In its previous

comment, the Committee noted the Government's indication that the approach adopted by the Directorate for Labour in that regard is consistent with the principles of freedom of association and leaves it to organizations to control their own accounts, financial assets and property; and that a protocol agreement had been agreed between the Government and the public sector round-table of 2014 which included the commitment to address possible amendments to Act No. 19296.

– Repeal of section 11 of Act No. 12927 on the internal security of the State, which provides that an interruption or strike in certain services may be penalized with imprisonment or banishment, and the amendment of section 254 of the Penal Code, which establishes criminal penalties in the event of the interruption of public services or public utilities or dereliction of duty by public employees. In its previous observation, the Committee noted the Government's indication that these provisions had not been applied and recalled that no penal sanction should be imposed on a worker for participating peacefully in a strike, which is merely exercising an essential right, and therefore that sentences of imprisonment or fines should not be imposed.

The Committee observes that in its latest report the Government has not provided any further information on the application, amendment or repeal of these provisions, and that the observations of the various social partners continue to denounce the incompatibility of these provisions with the Convention. ***The Committee once again expresses the hope that the Government will take the necessary measures in the very near future to bring these provisions into conformity with the Convention and requests it to report any developments in this regard.***

*Article 3. Right of organizations to organize their activities and to formulate their programmes. Exclusion from strike action of enterprises declared to be strategic.* Section 362 of the Labour Code, under the heading of the determination of enterprises in which the right to strike may not be exercised, provides that a strike may not be called for workers providing services in corporations or enterprises, irrespective of their nature, purpose or function, which provide services of public utility or the cessation of which would cause serious damage to health, the national economy, the provision of supplies to the population or national security. In its previous comment, the Committee recalled that this definition of enterprises in which the right to strike cannot be exercised, to be approved jointly by various ministries and subject to appeal to the Court of Appeal, potentially covers services which go beyond the definition of essential services in the strict sense of the term (those the interruption of which may endanger the life, personal safety or health of the whole or part of the population). Recalling that the prohibition of strikes relating to the services provided should be limited to essential services in the strict sense of the term, the Committee reiterated that the concepts of public utility and of damage to the economy are broader than that of essential services. The Committee also observed that "services of public utility" would already be covered by the system of minimum services established in section 359, which is distinct from the concept of essential services in the strict sense of the term. Observing that the Government has not provided the requested information on the application of this provision in practice, the Committee notes that, according to the indications of the ITUC, under the terms of this provision a list was approved in August 2017 of 100 enterprises considered to be strategic and excluded from the exercise of the right to strike, which include enterprises in the health and energy sectors, and that 14 unions have lodged appeals in this regard with the Court of Appeal. The Committee also notes that in August 2019 a new list was published of enterprises considered to be strategic and excluded from the exercise of the right to strike (43 enterprises were removed from the former list of 100 enterprises, and 15 new enterprises were added). ***While considering that section 362 of the Labour Code should be amended to ensure that the prohibition of the right to strike can only cover essential services in the strict sense of the term, the Committee once again requests the Government to provide information on the application in practice of section 362 of the Labour Code, with an indication of the various categories of services provided by the enterprises excluded from the exercise of the right to strike, and the action taken in relation to any complaints lodged in this respect. The Committee recalls that, without calling into question the right to strike of the large majority of workers, a negotiated minimum service may be established for public services of fundamental importance that are not essential services in the strict sense of the term.***

*Replacement of workers.* In its previous comment, while on the one hand the Committee noted with satisfaction the introduction in the Labour Code of a prohibition to replace striking workers, as well as the sanctions in the event of such a replacement (sections 345, 403 and 407) on the other hand, it noted that, according to the CGTP, other recently introduced provisions could undermine or introduce uncertainty into such prohibition to replace striking workers. The CGTP referred, in particular, to the possibility envisaged in new section 306 of the Labour Code for an enterprise that has subcontracted work or services to another enterprise to carry out directly or through a third party the subcontracted work or services interrupted due to a strike (in this regard, the CGTP alleged that over 50 per cent of workers in the country work in subcontracting enterprises). The Committee requested the Government to provide its comments on the observations of the CGTP and to report on the application in practice of sections 306, 345, 403 and 407, including the sanctions imposed for the replacement of striking workers, and on the impact of the hiring of workers under section 306 on the workers or services interrupted due to a strike. The Committee notes that the Government reports various legal opinions issued by the Directorate for Labour concerning

these provisions, including an opinion that it is not in accordance with the law for an enterprise providing temporary services to provide workers to a principal enterprise for the performance of work or services which have been interrupted due to a strike by workers in the enterprise contracted to perform them. The Committee welcomes these clarifications, while noting that the Government has not provided further information on the application in practice of the above-referred provisions. The Committee also notes that the issue of the replacement of workers is the subject of additional observations by the social partners. In this respect, the CTC indicates that section 403 of the Labour Code supports the internal replacement of striking workers, and the CGTP denounces the fact that the authorities have allowed the replacement of striking workers in the public passenger transport sector in Santiago de Chile. ***The Committee requests the Government to provide its comments on the observations of the social partners on these matters, and to provide further information on the application in practice of sections 306, 345, 403 and 407, including on the sanctions applied for the replacement of striking workers, and on the impact of the hiring of workers under section 306 on striking workers or services interrupted due to a strike.***

*Exercise of the right to strike beyond the framework of regulated collective bargaining.* In previous comments, the Committee noted that, in general terms, the exercise of the right to strike is regulated exclusively within the framework of regulated collective bargaining. In this respect, the Committee referred to the recommendations made to the Government by the Committee on Freedom of Association (CFA), in which: (i) given that existing legislation does not permit strike action outside the context of the collective bargaining process, the CFA requested the Government, in consultation with workers' and employers' organizations, to take all necessary steps to amend the legislation in line with the principles of freedom of association (see 367th Report, March 2013, Case No. 2814, paragraph 365); and (ii) recalling the principle that the occupational and economic interests that workers defend through the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the enterprise which are of direct concern to the workers, the CFA requested the Government to take all the necessary measures, including legislative measures if necessary, to uphold this principle, and to submit the legislative aspects of the case to the Committee of Experts (see 371st Report, March 2014, Case No. 2963, paragraph 238).

In this regard, certain social partners (see for example, the observations of the ITUC in 2016, the CGTP in 2016 and 2019, and the CTC in 2019) have been denouncing the failure to protect the right to strike outside the framework of regulated collective bargaining. The Committee also noted that a ruling of 23 October 2015 of the Court of Appeal of Santiago held that the sole fact that the law regulates strike action in one instance, that is in the context of regulated collective bargaining, cannot lead to the conclusion that outside that context strikes are prohibited, based on the understanding that matters that the legislature has failed to regulate or define cannot be held to be prohibited (the Committee refers to other recent rulings along these same lines, such as the ruling by the Labour Court of Antofagasta of 6 August 2019, finding that the right to strike is an essential right regulated by the Convention and that the Supreme Court has found that the right to strike is guaranteed even outside the framework of collective bargaining procedures). ***In light of the judicial decisions referred to above, the Committee once again requests the Government to provide its comments on the observations of the social partners denouncing the failure to protect the right to strike outside the framework of regulated collective bargaining and to provide information on any measures taken in relation to the recommendations referred to in this regard.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020) relating to the measures adopted in the context of the COVID-19 pandemic. The Committee has taken due note of this information in its observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee also notes the observations of the Single Central Organization of Workers of Chile (CUT), received on 6 October 2020, relating to the application of the Convention in practice. ***The Committee requests the Government to provide its comments in this regard.***

The Committee notes that, as to the complaint made under article 26 of the ILO Constitution alleging failure to comply with this and other ILO Conventions by the Republic of Chile, made by a Worker delegate to the International Labour Conference in 2019, the Governing Body decided not to refer the matter to a Commission of Inquiry and to close the procedure under article 26; and invited the Government to continue reporting to the ILO regular supervisory system on measures taken to apply in law and practice the Conventions concerned.

As to other pending matters, the Committee reiterates the content of its comments adopted in 2019 and reproduced below.

The Committee notes the observations relating to the application of the Convention in law and practice (including allegations of violations in the public, financial, transport, food and copper sectors) provided by the following organizations: the Confederation of Copper Workers (CTC), the General Confederation of Public and Private Sector Workers (CGTP) and the World Federation of Trade Unions (WFTU, taking up the observations of the CGTP), all received on 30 August 2019; the International Trade Union Confederation (ITUC), received on 1 September 2019; and the observations of the Federation of Workers Unions of Chile (FESINTRACH), received on 2 September 2019, the No. 1 Promotion CMR Falabella Enterprise Union, received on 20 September 2019, and the Single Central Organization of Workers of Chile (CUT-Chile), received on 26 October 2019. ***The Committee requests the Government to provide its comments in this regard.*** Observing that the Government has not replied to the various requests made in its previous comments, including in relation to the many observations provided by the social partners in 2016, the Committee trusts that it will receive the missing information in the next report.

*Article 1 of the Convention. Anti-union discrimination.* In its previous comment, the Committee, welcoming the provisions adopted to broaden and strengthen protection against anti-union discrimination, requested the Government, in the light of the considerations outlined by the Committee on Freedom of Association, and the observations of the social partners, to provide information on the impact in practice of the new provisions, evaluating in particular their effective application and dissuasive effect. The Committee notes the Government's response to the observations of the CGTP and the ITUC in this respect: (i) referring to the applicable provisions of the Labour Code on anti-union and unfair practices (sections 289–292 and 403–406), and recalling that the resolution of complaints is the responsibility of the labour courts, the Government indicates that as a result of the labour reform introduced through Act No. 20940, the legislation establishes distinctions based on the size of the enterprise, with a heavier system of sanctions for medium-sized and large enterprises, and places emphasis on the objective nature of anti-union acts, irrespective of whether they are intentional or not; (ii) the Government indicates that a register is maintained of convictions for anti-union or unfair practices in collective bargaining and the list of enterprises and organizations that are non-compliant is published every six months, with an indication of the acts penalized and fines imposed; the Government refers in this regard to the data on the rulings issued between 2016 and the first half of 2019 (which show that on average there were over 42 convictions each year); (iii) with regard to the legislative requirement to indicate the name of all workers who are members of a union, the Government indicates that, rather than facilitating anti-union discrimination, the provision has a protective purpose by giving effect to the trade union protection enjoyed by such workers under section 309 of the Labour Code (from ten days prior to the submission of the draft collective agreement until 30 days following its conclusion, and that if during this period the workers in question are dismissed, the Directorate for Labour has a special investigation procedure with the purpose of requiring reinstatement); in this regard, it emphasizes the need to know which workers are engaged in collective bargaining; it is also based on other considerations (for example, in order to identify the workers concerned by the collective bargaining process in the event of tacit acceptance by the employer of the union's proposal), and it specifies that, once the protection afforded for collective bargaining has expired, section 294 of the Labour Code provides for a procedure for setting aside any anti-union dismissal; and (iv) with reference to claims concerning the existence of obstacles and the lack of mechanisms and means to denounce and penalize anti-union practices, the Government indicates that, during the first half of 2019, there were 26 rulings penalizing anti-union or unfair practices in collective bargaining which were given effect and, in 23 of these cases, fines were imposed of between 20 and 300 monthly tax units (approximately equivalent to between US$1,350 and $20,400); and that a total of 6,992 complaints of anti-union and unfair practices were made between 2013 and March 2018 to the Directorate for Labour, of which 352 related to unlawful individual reinstatement (abandoning a strike to individually negotiate labour conditions) or the replacement of striking workers (with 62 per cent of the complaints relating to reinstatement and replacement being upheld). The Committee also notes that the observations of the social partners include new allegations of anti-union discrimination, and claims that the system of protection against anti-union discrimination is still ineffective and not dissuasive (indicating, for example, that even the maximum penalty of 300 monthly tax units is not dissuasive for a multinational enterprise). ***While welcoming the detailed explanations and information provided by the Government, the Committee invites it to engage in dialogue with the most representative organizations on the evaluation of the system of protection against anti-union discrimination described above, with an assessment in particular of its application in practice providing information in this regard.***

*Article 4. Promotion of collective bargaining. Workers' organizations and negotiating groups.* In its previous comment, the Committee noted that: (i) the Constitutional Court found that it would be unconstitutional to provide that workers can only negotiate through unions, considering that, in accordance with the Chilean Constitution, collective bargaining is the right of each and every worker and that this Convention and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ratified by Chile do not require negotiating groups to be excluded from domestic legislation;

and (ii) the Government indicated that only collective bargaining with trade unions is regulated by the Labour Code, and that this situation was being assessed with the social partners, and that the Government trusted that a satisfactory solution would be reached in accordance with the Workers' Representatives Convention, 1971 (No. 135). The Committee notes the Government's indication in its latest report that: (i) in view of the ruling of the Constitutional Court, the Directorate for Labour issued Opinion No. 3938/33, of 27 July 2018, supplementing and partially reconsidering the previous approach relating to agreements concluded by negotiating groups, and indicating that these agreements constitute a collective instrument recognized explicitly by the Labour Code, which have to be registered by the labour inspectorate; (ii) various trade unions lodged an appeal for protection of their rights against this Opinion with the Court of Appeal of Santiago, which was upheld by the Court, although an appeal was then made to the Supreme Court, which set aside the ruling; and (iii) if a trade union considers that the establishment of a negotiating group or the benefits granted by the employer to a negotiating group imply any act of discrimination, action can be taken in the courts as an anti-union practice, and the corresponding administrative complaint can be made to the Directorate for Labour. The Committee also notes the observations of the CTC, CGTP and WCTU, which once again allege that the recognition of collective bargaining rights to these groups is contrary to the Convention, that this right was set out by Opinion No. 3938/33, referred to above, and that they consider that its purpose is to weaken trade unions and undermine collective bargaining. The Committee also observes that negotiating groups are not defined in the Labour Code.

The Committee is bound to recall once again that, without prejudice to the fact that Chilean legislation recognizes that each and every worker has the right to engage in collective bargaining, this is a collectively exercised right and the Convention, in the same way as other ILO Conventions ratified by Chile, recognizes in this respect the preponderant role of trade unions and workers' organizations over other methods of association. The concept of workers' organizations recognized in ILO Conventions is broad (covering a range of organizational forms), and the distinction therefore applies in relation to methods of association that do not fulfil the minimum guarantees and requirements to be considered organizations established with the objective and capacity to further and defend workers' rights independently and without interference. It is from this perspective that the Convention recognizes, in *Article 4*, as the parties to collective bargaining, employers or their organizations, on the one hand, and workers' organizations, on the other, in recognition that the latter offer guarantees of independence that other forms of association may lack. The Committee has therefore always considered that direct negotiation between the enterprise and groups of workers, without organizing in parallel with workers' organizations, where they exist, is not in accordance with the promotion of collective bargaining, as set out in *Article 4* of the Convention, and that groups of workers should only be able to negotiate collective agreements or contracts in the absence of workers' organizations. In addition, it has noted in practice that the negotiation of terms and conditions and work by groups which do not fulfil the guarantees to be considered workers' organizations can be used to discourage freedom of association and weaken workers' organizations that are able to defend independently the interests of workers through collective bargaining. ***The Committee requests the Government to adopt, through social dialogue, measures that effectively recognize the fundamental role and the prerogatives of representative organizations of workers and of their representatives, and establish mechanisms to prevent the involvement of a negotiating group in collective bargaining in the absence of a trade union from undermining the function of workers' organizations or weakening the exercise of freedom of association.***

*State enterprises.* With regard to the request to amend or repeal section 304 of the Labour Code (which does not allow collective bargaining in State enterprises dependent on the Ministry of National Defence, or which are connected to the Government through this Ministry, and in enterprises in which it is prohibited by special laws, or in public or private enterprises or institutions in which the State has financed 50 per cent or more of the budget in either of the last two calendar years, either directly or through duties or taxes), the Committee notes that the Government reiterates that this section has not been amended with respect to enterprises and institutions financed in part by the fiscal budget. In this regard, the Committee is bound to recall once again that the Convention is compatible with special methods of application for public service workers and reiterates that, in accordance with the terms of *Articles 5 and 6* of the Convention, only the armed forces, the police and public servants engaged in the administration of the State may be excluded from collective bargaining. ***The Committee urges the Government to take the necessary measures to guarantee, in law and practice, that the categories of workers referred to previously can participate in collective bargaining, and to report any developments in this regard.***

*Article 6. Scope of application of the Convention. Public employees not engaged in the administration of the State.* In its previous comment, the Committee noted that the reform of the Labour Code which entered into force in 2017 had not given effect to the request to amend section 1 (which provides that the Labour Code does not apply to officials of the National Congress or the judiciary, or to workers in state enterprises or institutions, or those to which the State contributes or in which it holds shares or is represented, on condition that such officials or workers are subject by law to special regulations). The Committee requested the Government to provide detailed information on the manner in which public

servants and employees who are not engaged in the administration of the State (for example, employees of public enterprises and decentralized entities, public sector teachers and transport sector staff) enjoy the guarantees of the Convention. The Committee notes that the Government has not replied to the issue raised and reiterates the information provided in its previous report, indicating that the reform only covers the private sector and that the public employees concerned by this provision, together with public employees of the centralized and decentralized administration, are part of the public sector, in respect of whom the State complies with and applies the Labour Relations (Public Service) Convention, 1978 (No. 151). ***Recalling that, pursuant to Article 6 of the Convention, only public servants engaged in the administration of the State are exempt from the application of the Convention, the Committee once again requests the Government to provide detailed information on the manner in which public servants and employees who are not engaged in the administration of the State (for example, employees of public enterprises and decentralized entities, public sector teachers and transport sector staff) enjoy the guarantees of the Convention. The Committee also once again requests the Government to provide, in its next report on Convention No. 151, clarifications regarding the application of the guarantees of that Convention to all workers in the public administration.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

# China

## Hong Kong Special Administrative Region

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the Hong Kong Confederation of Trade Unions (HKCTU) received on 15 and 30 September 2020 respectively, concerning the application of the Convention and alleging police repression and arrests made in connection to public protests carried out in 2019, including the arrest of Mr Lee Cheuk Yan, general secretary of the HKCTU, who was later released on bail pending a court hearing. The HKCTU states that his arrest dissuaded trade unionists from staging public protests and exercising their right to peaceful assembly. The Committee also takes note of the ITUC's allegation that the authorities have started to use the National Security Law, adopted on 30 June 2020 and to which the Committee refers in this observation, to crack down on legitimate and peaceful assemblies. The Committee takes note of the Government's reply to the ITUC and HKCTU's observations which indicates that the level of violence and damage caused by the public protests in 2019 and 2020 was alarming and that the Police have a statutory duty to safeguard public order and public safety. ***While taking due note of these indications, the Committee requests the Government to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation and within the framework of a system that guarantees the effective respect of civil liberties. The Committee also reiterates its request to the Government to provide its comments on the 2016 ITUC observations, including the alleged arrest of Mr Yu Chi Hang, organizing secretary of the HKCTU; and the alleged dismissal of all workers (coach drivers) prior to an announced strike coupled with the hiring of replacement labour***.

*Articles 2, 3, 5 and 8 of the Convention. Legislative developments. National Security Law.* For a number of years, the Committee has noted the proposals to implement article 23 of the Basic Law which, among others, would allow for the proscription of any local organization which was subordinate to a mainland organization, the operation of which had been prohibited on the grounds of protecting the security of the State; and had considered that those proposals could impede the right of workers and employers to form and join the organizations of their own choosing and to organize their administration and activities free from interference by the public authorities. The Committee had also noted the Government's indication that while it had a constitutional responsibility to legislate pursuant to article 23 of the Basic Law in order to safeguard national security, it would carefully consider all relevant factors, act prudently and continue its efforts to create a favourable social environment for the legislative work. The Government further stated that it would listen to public views earnestly and explore ways to enable the society to respond positively to the constitutional requirement. In its last comment, the Committee had expressed the firm hope that the Government would ensure that any new legislation to implement article 23 of the Basic Law would take due account of its comments and be in line with the Convention. The Committee requested

the Government to provide information on any developments in this regard, including on consultations held with the social partners.

The Committee notes that in its supplementary report the Government informs that on 28 May 2020, the National People's Congress adopted a decision on establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special Administrative Region (HKSAR) to safeguard national security. The Committee also takes note of the ITUC's and HKCTU's indication that on 30 June 2020, China's top legislature unanimously passed the National Security Law for Hong Kong, which entered into force the same day.

The Committee takes note of the various allegations and concerns raised by the ITUC and the HKCTU with respect to the National Security Law, which include the following: (i) the law was passed just weeks after it was first announced, bypassing Hong Kong's local legislature; (ii) the law is dangerously vague and broad and virtually anything could be deemed a threat to "national security" under its provisions; (iii) under the law "secession", "subversion", "terrorism" and "collusion with foreign forces" incur maximum penalties of life imprisonment; (iv) authorities have at their disposal a broad range of powers with absolutely no checks and balances to ensure the rule of law, respect for fundamental rights and due process and suspects can be removed to mainland China, handled within the mainland's criminal justice system and tried under mainland law; (v) although the law includes a general guarantee to respect human rights, other provisions of the law could override these protections; (vi) article 62 provides the law with a prevailing status to override all other local laws of Hong Kong; and (vii) article 29 of the law poses threats to the right of trade unions in Hong Kong to freely associate and pursue solidarity activities with international organizations as it criminalises "directly or indirectly receiving instructions, control, funding or other kinds of support from a foreign country or an institution" to commit certain acts with a view to, inter alia, "seriously disrupting the formulation and implementation of laws or policies by the Government of the Hong Kong Special Administrative Region or by the Central People's Government, which is likely to cause serious consequences".

The Committee notes that, in its reply to the ITUC and HKCTU's observations, the Government indicates that the situation since June 2019 had evolved to such a state that the Central Authorities had no alternative but to step in and take action, with the HKSAR Government having failed for the past 23 years to enact its national security laws as required by Article 23 of the Basic Law to safeguard national security. The Committee takes note that the Government indicates that: (i) "different countries have their own national security laws and their law is no different; (ii) it is misleading to say that the adoption of the National Security Law "bypassed" article 23 of the Basic Law because, as indicated by article 7 of the National Security Law, the HKSAR still has the obligation to complete as early as possible legislation for safeguarding national security as stipulated under article 23 of the Basic Law; (iii) before adopting the law, the Standing Committee of the National People's Congress had, through different channels, gauged the views of the HKSAR Government and various sectors of the community in Hong Kong, (iv) the establishment of the mechanism for safeguarding national security in the HKSAR will not undermine or replace the HKSAR's existing legal system, and the judicial system continues to be protected by the Basic Law; (v) article 4 of the law mandates that human rights shall be respected and protected in safeguarding national security in the HKSAR, and that the rights and freedoms enjoyed by the HKSAR residents (including the right to freedom of association and to form and join trade unions under article 27 of the Basic Law of the HKSAR and Article 8 of the International Covenant on Economic, Social and Cultural Rights and Article 22 of the International Covenant on Civil and Political Rights as applied to Hong Kong) shall be protected in accordance with the law; and (vi) Hong Kong is an international city having close contact and communication with other countries, regions and relevant international organizations; these normal interactions and activities are protected by the Basic Law and local laws of the HKSAR; what the National Security Law seeks to prevent, suppress and punish is only the collusion with foreign and external forces to carry out activities of secession, subversion, infiltration and sabotage - for example, activities such as begging for foreign sanctions that severely damage the interests of Hong Kong are distinctly different from normal interactions (including normal associations between trade unions in Hong Kong and international organizations)."

The Committee takes due note of the Government's indications. It recalls that *Article 8* of the Convention sets out both that: (i) in exercising the rights provided for in the Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land; and that (ii) the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention. In this respect, the Committee further recalls that workers' and employers' organizations should have the right to organize their activities in full freedom and to formulate their programmes with a view to defending the occupational interests of their members, while respecting the law of the land. This includes in particular the right to hold trade union meetings, the right of trade union officers to have access to places of work and to communicate with management, the right to organize protest action, as well as certain political activities (such as expressing support for a political party considered more able to defend the interests of members), and having close contact and

communication with international organizations of workers and employers. In turn, the authorities should refrain from any interference which would restrict freedom of association and assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order (see the 2012 General Survey on the fundamental Conventions, paragraph 115). Emphasizing that international trade union solidarity constitutes one of the fundamental objectives of any trade union movement, the Committee expects that the Government will ensure as it has stated that normal trade union interactions and activities are indeed protected by the law.

***Having noted the concerns expressed by the ITUC and the HKCTU on the possible negative effects that the application of the National Security Law may have on the rights enshrined in the Convention, the Committee requests the Government, in consultation with the social partners, to monitor and provide information on the impact that the Law has already had and may continue to have on the application of the Convention.***

The Committee welcomed the statistics supplied by the Government according to which, as of 31 May 2019, the number of trade unions was 914, representing an increase of 13.1 per cent in the last ten years.

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 16 September 2020 reiterating matters raised in its observations sent in 2019 and addressed in the present comment. It also notes the observations of the Hong Kong Confederation of Trade Unions (HKCTU) received on 30 September 2020 referring to matters addressed in the present comment and denouncing violations of the Convention in practice, including anti-union transfers and demotions in the context of public protests. The Committee takes note of the reply of the Government in connection to the ITUC and HKCTU's observations. It notes that the reply mostly concerns matters examined within the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). ***The Committee thus requests the Government to provide its comments on the 2020 HKCTU's allegations of violations of the present Convention in practice as well as on the 2016 observations from the ITUC and the HKCTU, which also contain allegations of violations of the Convention in practice.***

The Committee also notes the Government's supplementary report provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020), which does not provide new information on pending issues. The Committee therefore reiterates the content of its observation adopted in 2019 and reproduced below.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination*. In its previous comments, the Committee had noted the Government's reference to the drafting of an amendment that would empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent. The Committee had expressed its expectation that the Bill, which had been under examination for 17 years, would be adopted without any further delay so as to give legislative expression to the principle of adequate protection against acts of anti-union discrimination and would be effectively enforced in practice. The Committee notes with ***interest*** the Government's indication that, by virtue of the Employment (Amendment) (No. 2) Ordinance, 2018, which amends the Employment Ordinance (EO), the Labour Tribunal and the courts are now empowered, in case of an unreasonable or unlawful dismissal (among others, dismissal by reason of exercising the right to trade union membership or participation in trade union activities), to make a compulsory order for reinstatement or re-engagement without having to secure the agreement of the employer. The Committee observes, however, that, according to the ITUC and the HKCTU, the amended ordinance allows for discretion in ordering reinstatement and the penalty for the employer's failure to observe a reinstatement is not sufficiently dissuasive to ensure such compliance (three months of the worker's average salary and not exceeding 72,500 Hong Kong Dollars (HKD) (US$9,300)). The Committee also notes the Government's statement that it accords high priority to investigating complaints on suspected anti-union discrimination but observes that, according to the ITUC and the HKCTU, only two prosecutions of anti-union discrimination resulted in reinstatement since 1974, as it is difficult to prove the employer's covert intent in criminal proceedings. ***In light of the above, the Committee requests the Government to provide information on the application in practice of the amended EO, in particular to inform about its impact on the number of reinstatement orders issued by the courts and effectively implemented by the employers. Bearing in mind the allegations made by the ITUC and the HKCTU with regard to anti-union dismissals and threats of dismissals in the context of public protests, the Committee requests the Government to take the necessary measures to investigate any allegations of anti-union discrimination and to impose sufficiently dissuasive sanctions to avoid the occurrence of such acts in the future. The Committee further requests the Government to provide updated statistics on the number and nature of complaints of anti-union discrimination filed to the competent authorities, their follow-up and outcome.***

*Article 4. Promotion of collective bargaining*. The Committee recalls that it had previously referred to the need to strengthen the collective bargaining framework in the light of the low levels of coverage of collective agreements, which were not binding on the employer, and the absence of an institutional framework for trade union recognition and collective bargaining. In its previous comment, the Committee requested the Government, in consultation with the social partners, to step up its efforts to take effective measures, including of a legislative nature, in order to encourage and promote free and voluntary collective bargaining in good faith between trade unions and employers and their organizations. The Committee notes the Government's indication that: (i) collective bargaining compelled by law is not conducive to voluntary negotiation and there is no consensus on introducing compulsory bargaining in the legislation; (ii) the Labour Department, making use of its conciliation services, encourages employers and employees to draw up agreements on the terms and conditions of employment, which has contributed to harmonious industrial relations; (iii) collective agreements have been reached in certain industries including printing, construction, public bus transport, air transport, food and beverage processing, pig-slaughtering and elevator maintenance; (iv) the Government has been taking numerous measures appropriate to local conditions, both at the enterprise and industry levels, to encourage and promote voluntary negotiation and effective communication between employers and employees or their respective organizations, including through the industry-based tripartite committees; and (v) all the above efforts help foster an environment conducive to voluntary bipartite negotiation between employers and employees or their respective organizations.

While taking due note of the information provided, including on the promotional measures and activities undertaken, the Committee observes the concerns raised by the ITUC and the HKCTU that there is still no legal framework to regulate the scope, protection and enforcement of the agreements and that less than one per cent of workers are covered by collective bargaining. The Committee recalls in this regard that collective bargaining is a fundamental right which members States have an obligation to respect, promote and to realize in good faith and that the overall aim of *Article 4* of the Convention is to promote good-faith collective bargaining between workers or their organizations on the one hand, and employers or their organizations, on the other hand, with a view to reaching an agreement on terms and conditions of employment. The Committee also emphasizes that it has not been requesting the Government to impose compulsory collective bargaining, as under the terms of *Article 4* of the Convention, collective bargaining must be free and voluntary but that it has been pointing to the need to strengthen the collective bargaining framework. The Committee also reiterates, as regards the tripartite committees established at the industry-level, that the principle of tripartism, which is particularly appropriate for the regulation of questions of a larger scope (drafting of legislation and formulating labour policies), should not replace the principle enshrined in the Convention of autonomy of workers' organizations and employers (or their organizations) in bipartite collective bargaining on conditions of employment. The Committee also recalls that, whatever the type of machinery used, its first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and administrative structure to which they may have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement under the best possible conditions (see the 2012 General Survey on the fundamental Conventions, paragraph 242). ***Considering the above, the Committee requests the Government, in consultation with the social partners, to step up its efforts to take effective measures, including of a legislative nature, to strengthen the legislative framework for collective bargaining so as to encourage and promote free and voluntary collective bargaining in good faith between trade unions and employers and their organizations. The Committee requests the Government to provide statistics on the number of collective agreements concluded, the sectors to which they apply and the number of workers covered.***

*Article 6. Collective bargaining in the public sector*. In its previous comments, the Committee requested the Government to ensure that public servants not engaged in the administration of the State, including teachers and employees in public enterprises, enjoy the right to collective bargaining. The Committee ***regrets*** to observe that the Government simply reiterates that every civil servant, irrespective of grade or rank, is a part of the civil service and contributes to the administration of the Government, and that all civil servants are thus excluded from the application of *Article 6* of the Convention. It also observes the concerns expressed by the ITUC and the HKCTU that civil servants are excluded from the enforcement of the Convention without distinction of rank and job. While further noting the Government's explanation that there are sufficient avenues for staff representatives to participate in the process for determining the terms and conditions of employment, including through an elaborate three-tier staff consultation mechanism and independent bodies which provide impartial advice on matters of conditions of employment, the Committee reiterates 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, public servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who

should benefit from the guarantees provided for in the Convention. It recalls that the establishment of simple consultation procedures for public servants instead of real collective bargaining procedures is not sufficient. ***The Committee therefore urges the Government to take the necessary measures, in consultation with the social partners, to ensure that public servants not engaged in the administration of the State, including teachers and employees in public enterprises, enjoy the right to collective bargaining. The Committee trusts that the Government will be able to report progress in this regard in the near future.***

## Macau Special Administrative Region

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year as well as on the basis of the information at its disposal in 2019.

In its previous comment, the Committee noted the observations of representative organizations of workers communicated with the Government's report and collected through the Standing Committee for the Coordination of Social Affairs, whose members are appointed from the most representative workers' and employers' organizations (currently the Macao Chamber of Commerce and the Macao Federation of Trade Unions). These observations referred to the need to adopt specific laws on freedom of association. The Committee further noted the observations of the Macau Civil Servants' Association received on 6 August 2019, also referring to the need to legislate on matters of freedom of association and collective bargaining, and the Government's general reply thereto. The Committee also noted the Government's additional reply to the 2014 observations of the International Trade Union Confederation (ITUC).

*Articles 2 and 3 of the Convention. Right to organize of all categories of workers. Right of organizations to organize their activities*. The Committee recalls that it had previously noted the Government's indication that freedom of association, procession and demonstration, as well as the right and freedom to form and join trade unions and to strike, are guaranteed to all Macao residents by section 27 of the Basic Law of the Macao Special Administrative Region, and that in line with section 2(1) of the Regulation on the Right of Association (Law No. 2/99) everyone can form associations freely and without obtaining authorization. The Committee had also noted that the draft Law on Fundamental Rights of Trade Unions, which was meant to give effect to the right to organize and collective bargaining, had been pending adoption since 2005.

In its previous comment, the Committee noted the Government's indication that the draft Law on Fundamental Rights of Trade Unions had been submitted to the legislative council and vetoed for the tenth time. In April 2019, those who oppose the draft law considered that many substantive and procedural laws already exist to protect workers and that the social situation had changed since the first draft was submitted, as a result of which the draft law does not reflect the needs of the current society. While the Government did not oppose the enactment of the trade union law at an appropriate time, it considered that it had to listen to the opinions of all members of society and the relevant stakeholders to respond to the societal situation and tailor the law and regulations accordingly. The Government indicated that since 2016, a research study had been ongoing on the essential social conditions for the discussion of the draft Law on Fundamental Rights of Trade Unions. The Government expected this study to be finalized in the second half of 2019. The Committee also noted that, in their observations, the representative organizations of workers had considered that the absence of a law on trade unions and collective bargaining constituted a severe legislative loophole and they remained in favour of enacting a set of concrete and specific laws to truly guarantee and protect the right to form, join and represent trade unions. Bearing in mind the views expressed by workers' organizations and recalling that the draft Law on Fundamental Rights of Trade Unions had been pending adoption for more than a decade, the Committee urged the Government to intensify its efforts to achieve consensus on the draft Law and to bring about its adoption in the near future, and to inform the Committee of the results of the above-mentioned study.

The Committee notes the Government's indication in its supplementary report that the study, finalized in 2019, advised the Government to review and improve the labour policy on a gradual basis to better adapt to the socio-economic environment of the region and to undertake such review in accordance with the Basic Law and international conventions. The Government further indicates that, to improve the labour legislation on a gradual basis and take into account the long term development of society, it will begin the early stage of the legislation process of the Trade Union Law and is planning to undertake a public consultation in the third quarter of 2020 to allow ample discussion to find a consensus that takes minority opinions into account, and thus provide a foundation for formulating a Law that is responsive to the societal needs.

While taking due note of the Government's indications, the Committee is bound to note with ***regret*** that the draft Law on Fundamental rights of Trade Unions has been pending adoption for fifteen years. ***The Committee therefore once again urges the Government to intensify its efforts to achieve consensus on the draft Law and to bring about its adoption in the near future. The Committee also reiterates its expectation that this Law will explicitly grant the rights enshrined in the Convention to all categories of workers (with the only permissible exception of the police and the armed forces), including domestic workers, migrant workers, self-employed workers and those without an employment contract, part-time workers, seafarers and apprentices, so as to ensure that freedom of association, including the right to strike, can be effectively exercised. The Committee requests the Government to inform of all developments in that regard.***

In the same vein, the Committee also previously requested the Government to provide information on developments regarding the adoption of legislative frameworks regulating rights of specific categories of workers, as provided for in section 3(3) of the Labour Relations Law. The Committee noted in this regard that: (i) the draft Part-Time Labour Relations Law was submitted to the Standing Committee in 2018 but due to the need for a more comprehensive discussion, the Government resubmitted the draft law again for further comments from workers' and employers' representatives; and (ii) the draft Seafarers' Labour Relations Law was still under discussion to ensure its compatibility with the relevant international Conventions. The Committee had further noted the Government's reiteration that while these draft laws are specialized regulations to address the specific characteristics of labour relations in the above sectors, the basic regulations concerning these workers are contained in the Labour Relations Law and workers in all industries, including seafarers and part-time workers, are entitled to freedom of association, organization and the right to participate in trade unions.

***Taking due note of the Government's prior explanation and the absence of any updated information, the Committee once again requests the Government to continue to provide information on developments regarding the adoption of legislative frameworks regulating rights of specific categories of workers, including part-time workers and seafarers, and to indicate whether these instruments include any provisions on the promotion and protection of the rights granted in the Convention. The Committee expects that any legislative frameworks regulating rights of specific categories of workers will be in full conformity with the Convention.***

*Application of the Convention in practice*. In its previous comment the Committee noted the statistics provided by the Government on the number of trade unions (408 registered workers' organizations, out of which 49 involve civil servants as of April 2019), as well as the detailed information on dispute settlement of labour disputes involving more than ten workers. The Committee also took note of the measures that the Government indicated to have taken to protect workers' freedom of association and assembly and improve labour conditions as well as the Government's statement that, in order to formalize the employment agency system, it had proposed the Employment Agency Bill to the legislative council. The Committee welcomes the updated statistics provided by the Government on the number of trade unions and observes that by May 2020, there were 440 registered workers' organizations, which shows that, in comparison to the numbers of 2019, and as indicated by the Government, the number of registered worker-related associations continued to rise. The Committee also takes note of the detailed updated information on dispute settlement of labour disputes involving more than ten workers. ***The Committee encourages the Government to continue to provide statistics as well as other relevant data in relation to the application of the Convention in practice.***

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year (see legislative developments and *Articles 1* and *2* below), as well as on the basis of the information at its disposal in 2019.

In its previous comment, the Committee noted the observations of representative organizations of workers communicated with the Government's report and collected through the Standing Committee for the Coordination of Social Affairs, whose members are appointed from the most representative workers' and employers' organizations (currently the Macao Chamber of Commerce and the Macao Federation of Trade Unions). These referred to the need to adopt specific laws on freedom of association and point to anti-union practices in some enterprises. The Committee further noted the observations of the Macau Civil Servants' Association received on 6 August 2019, also referring to the need to legislate on matters of freedom of association and collective bargaining, and the Government's general reply thereto. The Committee also noted the Government's additional reply to the 2014 observations of the International Trade Union Confederation (ITUC) but observed that the Government had failed to address the concrete

allegations of unfair dismissals of union members and teachers. ***The Committee reiterates its request to the Government to provide its comments on those specific allegations.***

*Legislative developments.* The Committee previously referred to its comments made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it recalled that while the Labour Relations Law adopted in 2008 contained some provisions that prohibit anti-union discrimination and provided sanctions for such acts, it did not include a chapter on the right to organize and collective bargaining, and that the draft Law on Fundamental Rights of Trade Unions, which would give effect to these rights, had been pending adoption since 2005. Referring to its comments made under Convention No. 87, the Committee strongly encouraged the Government to intensify its efforts in order to achieve the adoption, in the near future, of a legislation that would explicitly grant the various rights enshrined in the Convention and address the Committee's pending comments.

The Committee notes the Government's indication in its supplementary report that a research study, initiated in 2016 to understand the social conditions required for initiating a discussion on a Trade Union Law, was finalized 2019. The Government indicates that, in light of the study's recommendations, it will begin the early stage of the legislation process of the Trade Union Law and is planning to undertake a public consultation to allow ample discussion and provide a foundation for formulating a Law that is responsive to the societal needs.

***While taking due note of the Government's indications, the Committee recalls that the draft Law on Fundamental rights of Trade Unions has been pending adoption for fifteen years. Referring to its more detailed comments made in this regard under Conventions No 87, the Committee urges the Government to intensify its efforts to achieve the adoption, in the near future, of a legislation that will explicitly grant the various rights enshrined in the Convention and address the Committee's pending comments. The Committee requests the Government to provide information on any developments in this regard.***

The Committee also previously requested the Government to provide information on any developments regarding the adoption of legislative frameworks regulating the rights of seafarers and part-time workers and expressed the expectation that any such instruments would, in full conformity with the Convention, allow these categories of workers to exercise their right to organize and to bargain collectively. The Committee takes due note of the information provided by the Government and refers to its more detailed comments made under Convention No. 87.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* Having previously noted that fines imposed by section 85(1)(2) of the Labour Relations Law for acts of discrimination against workers due to their union membership or the exercise of their rights might not be sufficiently dissuasive, particularly for large enterprises (from 20,000 to 50,000 Macau patacas (MOP) equivalent to US$2,500–6,200), the Committee requested the Government to take the necessary measures to strengthen the existing pecuniary sanctions applicable to acts of anti-union discrimination in order to ensure their sufficiently dissuasive character. It also requested the Government to provide clarification on the use, if any, of sanctions provided for in the Penal Code, to which the Government made reference. The Committee notes the Government's indication that: (i) heavy penalties are already imposed for illegal acts violating workers' rights and the Government will continue to carefully review and improve the laws and regulations in the field of labour; (ii) violations of the Labour Relations Law are divided into administrative violations and "minor violations", which are more serious, have a criminal nature and to which the Penal Code applies; (iii) in case an employer deters an employee from exercising his or her rights or subjects the employee to any adverse treatment for exercising such rights (section 10(1) of the Labour Relations Law) and the act constitutes a criminal offence, the Labour Affairs Bureau will actively follow-up, institute a punishment procedure and impose a fine; and (iv) upon refusal by the employer to pay the fine, judicial proceedings will be initiated, in which the court can impose a fine under the provisions of the Penal Code. While taking due note of the information provided, the Committee observes that there do not seem to have been any concrete measures taken to increase the penalties foreseen for acts of anti-union discrimination, which therefore, still appear to be insufficiently dissuasive, particularly for large enterprises. The Committee notes in this regard that representative organizations of workers also emphasize the need to increase the amount of penalties and fines for anti-union discrimination in order to enhance the deterrence of such acts. They further consider that there is evidence of anti-union practices in some enterprises in which enterprise regulations require employees who join trade unions and assume trade union functions to inform the management. ***In light of the above, the Committee requests the Government once again to take the necessary measures, in consultation with the social partners, to strengthen the pecuniary sanctions applicable to acts of anti-union discrimination in order to ensure their sufficiently dissuasive character. The Committee requests the Government to provide information on any progress in this regard.***

The Committee also previously noted the 2014 ITUC observations, that section 70 of the Labour Relations Law, which allows rescission of contract without just cause accompanied by compensation, was in practice used to punish union members when they take part in union activities or industrial actions, and requested the Government to take the necessary measures, including legislative, if necessary, to ensure

that this provision is not used for anti-union purposes. In its previous comment the Committee noted that the Government stated that between 2014 and May 2019, the Labour Affairs Bureau had not received any complaints of anti-union dismissals but did not elaborate on any measures taken to address the ITUC concerns. The Committee notes the Government's indication in its supplementary report that between June 2019 and May 2020 the Labour Affairs Bureau did not receive any complaint of antiunion dismissals. ***Recalling that anti-union acts may not, in practice, always result in the filing of complaints to the competent authorities, the Committee requests the Government once again to take the necessary measures, including of a legislative nature, to ensure that termination of employment contract under section 70 of the Labour Relations Law is not used for anti-union purposes.***

*Article 2. Adequate protection against acts of interference.* The Committee had previously noted that sections 10 and 85 of the Labour Relations Law did not explicitly prohibit all acts of interference as described in *Article 2* of the Convention, or guarantee adequate protection by means of dissuasive sanctions and rapid and effective procedures. In its previous comment, it therefore requested the Government to take the necessary measures to ensure that the relevant legislation includes express provisions to this effect. The Committee notes that the Government reiterates the procedure explained above relating to obstruction by the employer of the exercise of employees' rights and states that it will continue its efforts to work towards the goals set by the Convention. Recalling once again that the applicable legislation (sections 10 and 85 of the Labour Relations Law and section 4 of the Regulation on the Right of Association) do not explicitly prohibit all acts of interference as described in *Article 2* of the Convention, the Committee emphasizes the need for legislation to explicitly protect workers' and employers' organizations against any acts of interference by each other or each other's members, including, for instance, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, and to make express provisions for rapid appeals procedures against such acts, coupled with effective and dissuasive sanctions. ***In light of these considerations, the Committee requests the Government once again to take the necessary measures to include in the relevant legislation provisions explicitly prohibiting acts of interference and providing for sufficiently dissuasive sanctions and rapid and effective procedures against such acts.***

The Committee also previously requested the Government to provide statistical information on the functioning, in practice, of the Labour Affairs Bureau and the Labour Tribunal, including the number of cases of anti-union discrimination and interference brought before them, the duration of the proceedings and their outcome. In its previous comment, the Committee noted the Government's indication that between June 2016 and May 2019 one case was opened on the allegations that an employee had been suspended for participating in a procession but it was later found that it was due to poor performance, and that no decisions were found before the courts that would deal with cases of discrimination or interference. The Committee notes the Government's indication in its supplementary report that between June 2019 and May 2020 the Labour Affairs Bureau did not receive any complaints concerning the suspension of employees because of participation in demonstrations. ***The Committee requests the Government to continue to provide statistical information on the functioning, in practice, of the Labour Affairs Bureau and the Labour Tribunal with regard to allegations of anti-union discrimination and interference brought before them, the duration of the proceedings and their outcome.***

*Articles 1, 2 and 6. Protection of public servants not engaged in the administration of the State against acts of anti-union discrimination and interference*. The Committee previously observed that the General Provisions on the Personnel of the Public Administration in Macao did not contain any provisions against anti-union discrimination and interference and that the Government did not indicate any other specific provisions that would explicitly provide protection to public servants against acts of anti-union discrimination and interference. The Committee requested the Government to take the necessary measures to amend the legislation so that it explicitly prohibits acts of anti-union discrimination and interference and grants public servants not engaged in the administration of the State adequate protection against such acts. The Committee notes that the Government reiterates that protection of civil servants against discrimination or interference for participating in trade union activities is guaranteed but observes once again that it does not point to any specific legislative provisions to this effect. ***In these circumstances, recalling that the scope of the Convention covers public servants not engaged in the administration of the State, the Committee requests the Government once again to take the necessary measures, including of a legislative nature, to explicitly prohibit acts of anti-union discrimination and interference and grant public servants not engaged in the administration of the State adequate protection against such acts.***

*Articles 4 and 6. Absence in legislation of provisions on collective bargaining for the private sector and public servants not engaged in the administration of the State.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure the full application of *Article 4* of the Convention both for the private sector and public servants not engaged in the administration of the State, whether through the adoption of the draft Law on Fundamental Rights of Trade Unions or any other legislation. The Committee notes the Government's statement that it always conducts discussions and

consultations with the social partners, either through the tripartite consultation platform of the Standing Committee for the Coordination of Social Affairs in the private sector, which has become an essential platform to communicate, negotiate and reach consensus and helps construct stable and harmonious employer–worker relations, or through the permanent consultation mechanism established by the Civil Service Pay Review Council to formulate standards and procedures for pay adjustment in the civil service. The Government indicates that several laws and regulations on the conditions of work of civil servants are currently being revised and that through the different consultation channels, civil servants can express their opinions on relevant matters. ***Recalling that the Convention tends to essentially promote bipartite negotiations of terms and conditions of employment and that the establishment of simple consultation procedures instead of real collective bargaining procedures is not sufficient, the Committee requests the Government once again to take the necessary measures in the very near future to ensure the full application of Article 4 of the Convention both for the private sector and public servants not engaged in the administration of the State, whether through the adoption of the draft Law on Fundamental Rights of Trade Unions or any other legislation, and to provide information on any developments in this regard.***

*Collective bargaining in practice.* The Committee notes that the Government has not conducted any relevant statistical analysis on collective agreements reached. ***The Committee requests the Government once again to provide statistics as to the number of collective agreements concluded, specifying the sectors concerned, their level and scope, as well as the number of enterprises and workers covered.***

## Colombia

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 16 September 2020, and the joint observations of the Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), received on 1 October 2020, as well as the corresponding comments of the Government. The Committee notes that these various observations relate to matters examined by the Committee in its present observation, as well as allegations of violations of the Convention in practice.

The Committee also notes the observations of the National Employers Association of Colombia (ANDI), communicated by the International Organisation of Employers on 1 October 2020, which refer to matters examined in the present observation.

*Trade union rights and civil liberties*. The Committee recalls that for many years it has been examining, in the same way as the Committee on Freedom of Association, allegations of violence against trade unionists and the situation of impunity in this regard. The Committee notes with ***deep concern*** that the ITUC, CUT and CTC continue to report the persistence of the situation of anti-union violence in the country. In this regard, the Committee notes that the ITUC, after referring to the particularly heavy impact of anti-union violence in the education, transport, mining and energy sectors, specifically denounces: (i) the murder between January 2019 and March 2020 of 14 trade union leaders; (ii) during the same period, four attempted murders, one case of forced disappearance and 198 cases of death threats against members of the union movement; (iii) the murder on 26 July 2020 of a union leader in the agricultural sector; (iv) the following and spying upon, by army agents, of various trade union and social leaders, including the Vice-President of the National Union of State and Public Service Workers of Colombia (UTRADEC) and the Human Rights Secretary of the General Confederation of Labour (CGT), Mr Humberto Correa between February and December 2019; and (v) the incapacity of the Government to provide specific and adequate protection for trade unionists who are victims of death threats, or to make progress in processing the many historical cases of murders and other violent crimes and resolve the majority of the most recent cases.

The Committee also notes the affirmation by the CUT and the CTC that an intense situation of anti-union violence persists, with sectoral and territorial characteristics similar to those described in 2019, and that the resurgence of anti-union violence in the rural sector is especially noteworthy, particularly in areas formerly controlled by the Revolutionary Armed Forces of Colombia (FARC). The trade union confederations emphasize that paramilitary forces and new criminal groups, which in some areas are related to local economic and political power bases, are the principal source of threats to trade unionism. They add that the unions worst affected by anti-union violence are in agriculture, education, the mining and energy sector, the public sector and transport.

The Committee notes the specific allegations by the CUT and CTC that: (i) three years after the conclusion of the Peace Agreement, between 2016 and May 2020, there were 998 cases of violations against the life and safety of trade union leaders (including 119 murders); (ii) between August 2019 and May 2020, there were another 141 documented acts of anti-union violence, including 18 murders and 101 death threats, with a trend for an increase in murders over the past four years; (iii) 44 per cent of the acts of anti-union violence are attributable to paramilitary groups, and 52 per cent are of unknown origin; (iv)

the Office of the United Nations High Commissioner for Human Rights has recorded 55 massacres in the country since January 2020, compared with 36 in 2019, and although these acts are not directly targeted against unions, they reduce the possibilities for workers' organizations to engage freely in their activities through fear of reprisals against them; (v) the national strike in November 2019 against the Government's economic and social policy and calling for compliance with the Peace Agreement gave rise to disproportionate police responses; and (vi) as a result of their leading role in the strike, leaders of the Colombian Federation of Education Workers (FECODE) and the CUT, including the President of the CUT, Mr Diógenes Orjuela, have received death threats from paramilitary groups, and there has been no progress in the corresponding investigations.

With reference to protection measures for trade union leaders who are at risk, the Committee notes the allegations by the CUT and CTC of their slowness, delays and ineffectiveness. The trade union confederations allege specifically that: (i) only 38 per cent of all the requests made for protection measures by members of the union movement during 2019 and 2020 were examined; (ii) in a context of a decreasing budget allocation for the protection of members of the union movement, the protection measures that were discontinued in 2019 amount to a little over 50 per cent of the measures that have been maintained; and (iii) the real and effective participation of trade unions in the process of the determination of protection measures has been diminishing, especially in the context of the Committee for the Assessment of Risks and the Recommendation of Measures (CERREM).

The Committee notes that the ANDI once again emphasizes the significant efforts made by public institutions both for the protection of members of the trade union movement and to take action against impunity, and the substantial results achieved in this regard.

The Committee also notes the information provided by the Government concerning the scourge of anti-union violence and the action taken by institutions to address it. The Committee notes that, in general terms, the Government indicates that: (i) while substantial progress has been achieved in relation to security, it continues to face many serious challenges caused by changes in criminal organizations and their capacity for adaptation, and the persistence of conditions that are conducive to their multiplication and strengthening; (ii) as a result of the huge efforts made by public institutions, the State of Colombia has managed to achieve a significant reduction in acts of violence against members of the union movement, as the number of homicides of trade unionists fell by 84 per cent between 2001 and 2019; (iii) similarly, the State has managed to break the impunity that previously reigned, and there are now 966 convictions related to acts of anti-union violence, compared with a single conviction in 2001; and (iv) while it condemns any act of violence against unionized workers, many of the homicides of trade unionists are not related to the union activities of the victims, but are the consequence of the generalized situation of violence that still persists in the country.

The Committee notes that, with reference to the institutional initiatives taken to achieve the results outlined above, the Government once again places emphasis on the Appropriate Action Plan (PAO) adopted in 2018 for the coordination of the protection programmes and resources of all the Government institutions with responsibility for ensuring the protection of trade union and social leaders and human rights defenders. The Committee also notes the emphasis placed by the Government on the relevance of the role played by the Inter-institutional Commission for the Promotion and Protection of the Human Rights of Workers, led by the Ministry of Labour, which brings together all the relevant public institutions and the social partners. The Government indicates that, in its meeting on 23 July 2020, the Inter-institutional Commission discussed many subjects related to prevention and protection against acts of anti-union violence, penalties, and relations between workers' federations and the police in relation to the exercise of social protest. The Government adds that 80 per cent of the action agreed upon in that meeting has already been implemented, all intended to protect the human rights of workers.

The Committee further notes the specific information provided by the Government concerning the protection of members of the union movement who are at risk, according to which: (i) during the course of 2018, a total of 447 risk evaluations were undertaken for members of the trade union movement, with 280 cases of extraordinary risk being identified, one of extreme risk and 167 cases of ordinary risk; (ii) in 2019, a total of 332 risk evaluations were undertaken for members of the trade union movement, with 206 cases of extraordinary risk being identified, one of extreme risk and 125 cases of ordinary risk; (iii) from 1 January to 31 August 2020, 190 risk assessments were carried out on members of the trade union movement, determining 109 cases of extraordinary risk, three of extreme risk and 78 of ordinary risk; (iv) the National Protection Unit (UNP) is currently providing protection for 298 trade union leaders and activists; and (v) the estimated cost of protection measures for members of the union movement was 42,889,000,054 Colombian pesos in 2018 (approximately US$12,081,623) and 39,986,188,070 pesos in 2019 (approximately US11,262,552). The Committee also notes that, in response to the observations of the CUT and the CTC, the Government indicates that: (i) not all requests for protection result in an exhaustive evaluation of the level of risk, since the UNP first verifies that the requests comply with the minimum requirements established by Decree 1066 of 2015; (ii) in 2019, 87 per cent of the security measures established the previous year were maintained; and (iii) the inter-institutional spaces for

protection, such as the CERREM, where the trade union confederations are invited, continue to be fully operational. The Committee finally notes the Government's indication that the emergence of new sources of threats resulted, during the course of 2019, in the need to strengthen protection measures and strategies for social leaders and human rights defenders.

With regard to the action taken to combat impunity, the Committee notes the Government's specific indications that: (i) the Office of the National Public Prosecutor is continuing to follow its strategy of the investigation and prosecution of crimes against trade unionists through cases being taken up and followed by the Elite Group established in 2016; (ii) simultaneously, the Office of the Public Prosecutor, based on Directive 002 of 30 November 2017, has been implementing a strategy for the investigation and prosecution of crimes against human rights defenders, which has been strengthened since 2020 with greater human, logistical and scientific capacity, as there is an interrelationship between the two strategies given that a unionized worker engaged in human rights activities is considered a human rights defender); (iii) of the 216 cases of homicides of members of the union movement investigated between 2011 and 2020, the Office of the Public Prosecutor has a rate of resolving 42.59 per cent of the cases (a total of 60 convictions have been handed down in 44 cases, while 30 cases are being prosecuted, charges have been brought in 10 cases, six cases are under investigation with arrest warrants issued and two cases are out of time); and (iv) Colombian courts have issued a total of 966 convictions in relation to acts of anti-union violence, of which 815 are for homicides of members of the union movement (525 of which were handed down between 2011 and 2020).

The Committee also notes the information provided by the Government concerning the 34 homicides committed in 2018 and denounced by the ITUC in 2019, in which it indicates that: (i) 21 cases are under investigation, eight are being prosecuted, convictions have been handed down in four cases and one case has been shelved; and (ii) of the 34 cases denounced, 19 are registered under the strategy for the investigation and prosecution of crimes against human rights defenders (of which nine are recorded as trade union leaders). ***The Committee requests the Government to continue providing detailed information on the progress made in the investigation of these cases.***

The Committee also takes note of the Government's comments on the observations of the CUT and the CTC regarding the authorities' response to the national strike of November 2019 and the anti-union acts that affected several union leaders active in the context of the aforementioned strike. The Committee notes that the Government indicates that: (i) the Government has always been respectful of the right to protest, and a statement reiterating the constitutional right to peaceful protest was signed at the plenary session of the Permanent Commission for Agreement on Wages and Labour Policies; (ii) the Government created spaces for dialogue with the various promoters of the strike; (iii) despite the guarantees provided by the Government, there were some outbreaks of violence aimed at destabilizing the security of citizens; (iv) following the attack to which he was subjected on 9 February 2020, the ex-president of FECODE, Mr Carlos Rivas, received complete emergency personal security measures as of 19 February 2020; and (v) the President of the CUT, Mr José Diógenes Orjuela also has complete personal security measures.

The Committee once again acknowledges the significant efforts made by the public authorities, both with regard to the protection of members of the trade union movement who are at risk and in the investigation and punishment of acts of anti-union violence. The Committee once again particularly welcomes in this respect the active commitment of the various relevant State bodies, and the initiatives taken to improve the effectiveness of State action through inter-institutional coordination and the consultations held with the social partners in the context of the Inter-Institutional Human Rights Commission. In particular, the Committee notes the 815 convictions handed down in relation to the homicide of members of the trade union movement since 2001 and the substantial increase in their numbers since 2016.

Nevertheless, the Committee expresses ***deep concern*** at the persistence of many homicides of members of the trade union movement and other acts of anti-union violence in the country, as well as the death threats against national and local trade union leaders in a context of the growing number of attacks against social leaders in general. The Committee takes special note of the indications by the trade union confederations that unions in agriculture, education, energy and mining are particularly affected, and the references by the Government and the trade union confederations to the current changes in the origins of anti-union violence. While being aware of the complexity of the challenges faced by the institutions responsible for criminal investigation, the Committee is once again bound to note the absence of data on the number of convictions of the instigators of acts of anti-union violence and it once again emphasizes in this regard the essential importance of the identification and conviction of the instigators of these crimes in order to break the cycle of anti-union violence. ***In view of the magnitude of the challenges described, and acknowledging the significant action taken by the public authorities, the Committee urges the Government to continue strengthening its efforts and the resources allocated for the provision of adequate protection for all trade union leaders and members who are at risk, and for their organizations, with full attention and the necessary resources being directed at the sectors most affected by anti-union violence. Emphasizing the significant increase in the number of convictions, the Committee***

***also urges the Government to continue taking all the necessary measures to ensure that all acts of anti-union violence, including homicides and other acts, occurring in the country are investigated and that the instigators and perpetrators are convicted. The Committee particularly hopes that all the necessary further measures will be taken and the necessary resources will be allocated to significantly improve the effectiveness of the investigations and criminal proceedings undertaken for the identification and punishment of the instigators of acts of anti-union violence. The Committee requests the Government to provide detailed information on this subject. The Committee finally requests the Government to provide information on the allegations made by the trade union confederations concerning the alleged acts of "espionage" (such as surveillance) against a series of trade union leaders.***

*Collective compensation measures for the trade union movement.* In its previous comment, the Committee noted with interest the establishment of the Standing Dialogue Forum for collective compensation for the trade union movement (hereinafter the Forum). The Committee requested the Government to continue providing information on the work of the Forum and on the implementation in practice of collective compensation measures for the trade union movement in view of the violence committed against it. The Committee notes the Government's indications that: (i) on 29 November 2019, a second session of the Forum was held to discuss its operation and the action necessary to make progress in the process of the Office of the Public Defender taking a statement from the trade union movement, which is an essential stage to allow the entry of the collective measures in the Single Record of Victims; (ii) the Office of the People's Defender, the CUT, CGT, CTC and FECODE met in December 2019 to review the information at the disposal of the trade union movement for inclusion in the statement; (iii) at the request of the trade union movement, the third session of the Forum was postponed on two occasions so that another preparatory meeting could be held by the trade union movement with the Office of the People's Defender and the Victims Unit; (iv) the third meeting of the Forum took place virtually on 23 April and 4 May 2020 with the leadership of the Victims Unit; (v) as agreed at the 3rd meeting of the Forum, two technical meetings were subsequently held with the trade union movement in July and September 2020 to review the progress made in the systematization of information; (vi) the various meetings above-mentioned made it possible to recruit the necessary technical personnel to go forward with the process and (vii) the Victims Unit has been managing the 4th meeting of the Forum since October 2020, awaiting a response from the trade union movement to set a date. The Committee notes that the Government reiterates its political will to provide compensation to the trade union movement, and emphasizes the importance of the latter making the statement referred to above to the Office of the People's Defender so that the legal procedures can go forward.

The Committee also notes the allegations by the CUT and the CTC that: (i) following the adoption of the protocol for the establishment of the Forum, it has not met since and has not made progress with any of the action assigned to it after a year of existence due to the lack of initiative and political will by the Government; (ii) despite the pandemic, the process could have continued virtually; (iii) the necessary technical personnel have not been recruited to carry forward the process; and (iv) the Forum also has to make progress in facilitating the submission by the trade unions of the formal statement by the union movement to the Office of the People's Defender.

***Taking note of the respective positions of the Government and the trade union confederations concerning the work carried out by the Forum in 2020, the Committee expects that the collective compensation measures for the trade union movement, in view of the violence committed against it, will be implemented in the near future. The Committee requests the Government to continue providing information in this regard.***

*Section 200 of the Penal Code*. In its previous comment, the Committee noted the information provided by the Government on the impact of the legislative and institutional initiatives adopted to facilitate the application of section 200 of the Penal Code, which establishes penal sanctions for a series of acts that are contrary to freedom of association and collective bargaining. The Committee previously noted in particular that, as a result of the special expedited criminal procedure established by Act No. 1826 of 12 January 2017 and the joint work plan developed since August 2016 by the Office of the Public Prosecutor and the Ministry of Labour, the examination had been concluded of 86 per cent of the 2,530 cases of alleged violations of section 200. However, the Committee also noted the allegations of the CUT, CTC and CGT that there is complete impunity in relation to the enforcement of section 200 as there have been no convictions. It also noted the Government's reply in this respect indicating that ten cases were before the courts, as an illustration of the absence of impunity.

The Committee notes that the Government and the ANDI provide updated data on the outcome of investigations into alleged violations of section 200 of the Penal Code. The Government indicates that, of the 2,727 cases of potential violations of section 200 of the Penal Code referred to the Office of the Public Prosecutor between 2011 and 20 October 2020, investigations have been concluded for 91.02 per cent and only 8.98 per cent are still under investigation. The Government adds that the conclusion of the cases is due to: (i) the shelving of criminal prosecutions (1,363 cases, establishing in 61,78 per cent of such cases that the criminal conduct had not existed); (ii) the ending of prosecution due to cases being time barred

or the withdrawal of charges (520 cases); (iii) the withdrawal of charges by the worker or trade union (441 cases); and (iv) conciliation (158 cases, the number of which has increased significantly since August 2016). The Committee also notes the Government's indication that it does not agree with the allegations made by the trade union confederations concerning impunity in respect of violations of section 200, as more than 90 per cent of the investigations have been completed and the outcomes indicated above have been presented to the Inter-institutional Human Rights Commission, which is led by the Ministry of Labour and in which the trade union confederations participate.

The Committee notes the indication by the CUT and CTC that the figures provided by the Government do not include data on the charges brought and the prosecution of cases, which is necessary to assess the effectiveness in practice of investigations into crimes committed in violation of section 200 of the Penal Code. The trade union confederations add that the enforcement of section 200 has not been referred to the trade union movement for consideration in 2020 as no meetings have been held on the subject.

While once again welcoming the increase in the number of cases resolved through conciliation and noting that, in its responses to the observations of the CUT and the CTC, the Government refers to the existence of eight cases currently before the courts, the Committee continues to note the absence of convictions for violations of section 200 of the Penal Code despite the very high number of criminal charges brought in this respect since 2011. ***In light of the above, the Committee once again requests the Government to engage, together with the Office of the Public Prosecutor and the social partners, in an assessment of the effectiveness of section 200 of the Penal Code and its enforcement and to report the outcome and any action taken as a result.***

*Articles 2 and 10 of the Convention. Trade union contracts.* With reference to trade union contracts, the contractual concept envisaged in Colombian legislation under which one or more unions undertake to provide services or perform work through their members for one or more enterprises or employers' organizations, the Committee recalls that in previous years it requested the Government to provide its comments on the observations of the CUT and CTC according to which trade union contracts perpetuate and extend unlawful employment mediation and undermine trade union action through the creation of false unions.

The Committee recalls in this respect that, in its most recent comment, it noted: (i) the Government's indication that trade union contracts are a legal concept the validity of which has been confirmed by the high courts of the country and which enable unions to participate in employment generation, and that guarantees exist to prevent the abuse of trade union contracts by false unions as a result of the provisions of Decree No. 0636 of 2016 and supervision by the labour inspection services in relation to employment mediation; (ii) the similar position of the ANDI, which also emphasizes the importance of respecting the independence of trade unions as to whether or not they conclude trade union contracts; (iii) the reiterated position of the CUT and CTC in their allegations that trade union contracts undermine the purpose and independence of trade unions, are an obstacle to the effective exercise of trade union rights by workers and permit the maintenance of unlawful employment mediation in the health sector; and (iv) the position of the CGT that, although trade union contracts may be a valid precept for strong trade unions, in practice a substantial number of associated work cooperatives have been converted into false unions to conclude trade union contracts, particularly in the health sector.

The Committee recalls that, on the basis of the elements noted above, it previously: (i) observed that within the framework of the very specific precept of trade union contracts, through which a trade union takes direct responsibility, through its members, for a productive activity on behalf of an enterprise, the union is responsible for organizing the work of its members and for providing them with the benefits corresponding to the work performed; (ii) noted that both the Government and the three trade union confederations (the CUT, CTC and CGT) agree that over 98 per cent of trade union contracts are concentrated in the health sector; and (iii) observed with deep concern that the three trade union confederations consider that associated work cooperatives, which previously engaged in unlawful employment mediation in the health sector, have taken on the form of false unions so as to be able to continue such activities through trade union contracts. On the basis of the above, the Committee emphasized that the exercise by a workers' union of the power of management and decision-making concerning the employment of its members is likely to generate a conflict of interests with its function of defending the claims of its members. The Committee therefore requested the Government to conduct a detailed assessment of the use of trade union contracts, particularly in the health sector, and to take the necessary measures to ensure that the precept of trade union contracts does not undermine the trade union rights of workers.

The Committee notes that the Government reiterates the comments made in 2019, indicating that: (i) trade union contracts enable trade unions to participate in the management of enterprises and to promote employment; (ii) within the framework of trade union contracts, two types of relations arise: the first is between the enterprise and the trade union, which is a manifestation of collective relations, as governed by collective labour standards; the other arises between union members and the union, which is a special relationship that benefits from special protection through the minimum guarantees and basic

constitutional principles governing labour, without constituting a labour relationship, as trade union contracts did not emerge for the purpose of transforming trade unions into a new type of employer; (iii) workers covered by a trade union contract are already covered by a collective agreement concluded between the employer and the union; (iv) the various provisions of Decree No. 036 of 2016, and particularly the rule that a trade union contract cannot be concluded unless a trade union has been established for at least six months before the conclusion of the contract, prevents a trade union from being created for the sole purpose of the immediate conclusion of trade union contracts; (v) the Ministry of Labour exercises control over cases that are denounced as unlawful employment mediation, which include cases of the undue use of trade union contracts; (vi) the Ministry of Labour is in the process of adopting the plan of action of the Public Policy for the prevention, inspection, supervision and control of labour: Undertakings for Decent Work 2020-30, adopted on 20 February 2020, which includes action intended to reinforce trade union freedoms involving supervision of the use of trade union contracts; (vii) there were 567 trade union contracts in force between January and June 2020, of which 95.8 per cent were in the health sector; (viii) 11 disputes were recorded concerning the undue use of trade union contracts (seven are at the preliminary investigation stage, charges are being prepared in three cases and one case is at the notification stage); (ix) with reference to inspections focussing on the supervision of trade union contracts, current trade union contracts were classified by economic sector, focussing on health, manufacturing and agriculture; (x) with a view to inspecting 20 per cent of the trade union contracts in force, the main focus was on export sectors; and (xi) as a result of the pandemic, it was decided to suspend the inspections, for which reason there is no data on inspections of trade union contracts between January and June 2020. The Committee further notes that the ANDI continues to express a position similar to that of the Government, once again emphasizing that it is necessary to respect the independence of trade unions to conclude trade union contracts, as the CGT trade union confederation, for example, has done.

The Committee finally notes that the CUT and CTC reiterate in their most recent observations that the concept of trade union contracts, which involve an enterprise providing additional finance to the trade union: (i) blurs the purpose for which trade unions are established; and (ii) places constraints on their independence in relation to the enterprise and disguises the nature of the true employer. The Committee notes that the two trade union confederations also consider that: (i) the proliferation of trade union contracts is persisting since, between January and June 2020, it was reported that 567 trade union contracts were registered; (ii) up to now the Government has not undertaken any reform of the rules to limit their use, and has certainly not proposed any reform for their elimination from Colombian legislation; (iii) the labour inspection services have been reluctant to consider the investigation of trade union contracts as unlawful means of employment mediation and, when carrying out inspections, they confine themselves to formal requirements concerning the conclusion and validity of the trade union contract; and (iv) up to the present, there is no indication that any penalties have been imposed against any of the over 1 700 trade union contracts in existence in the country, which are concluded with supposedly independent unions that are not known to the real trade union movement.

The Committee takes due note of the information provided by the Government and the social partners with regard to the precept of trade union contracts. The Committee observes that the various actors reiterate their respective positions and notes that there have not been specific changes in law or practice. The Committee notes in particular that the use of trade union contracts continues to be concentrated in 95 per cent of cases in the health sector. In this regard, while being fully aware of the great obstacles to labour inspection activities arising out of the COVID-19 pandemic, the Committee observes that the Government does not refer to any priority in planning action to supervise the use of trade union contracts in the sector. ***In light of the above, once again emphasizing that the attribution to a workers' union of the power of management and decision-making concerning the employment of its members is likely to generate a conflict of interest and may therefore endanger its capacity to fulfil the specific functions of trade unions to support and defend independently the claims of their members in relation to employment and terms and conditions of work, the Committee requests the Government to: (i) plan and conduct in the near future a detailed assessment of the use of trade union contracts, in particular in the health sector; and (ii) after sharing the results of this assessment with the social partners, take the necessary measures, including legislative measures where necessary, to ensure that the precept of trade union contracts does not undermine the trade union rights of workers and is not used for purposes that are incompatible with Article 10 of the Convention. The Committee requests the Government to provide information on all progress achieved in this regard.***

*Article 4. Judicial cancellation of trade union registration.* In its previous comment, the Committee requested the Government to provide its comments on the statements made by the CUT and CTC that the expedited procedure set out in section 380(2) of the Substantive Labour Code for the cancellation of the registration of trade unions does not offer adequate procedural safeguards.

The Committee notes the Government's description of the various stages and time limits of the expedited procedure for the cancellation of the registration of trade unions established by the Substantive Labour Code. The Government indicates in this respect that: (i) this judicial procedure, which recognizes

the right to contest and appeal the decision of the court of first instance, which suspends the decision, sets out constitutional guarantees of due process; (ii) with regard to the allegations that certain enterprises take advantage of this procedure to undermine freedom of association, the courts rule independently based on an examination of each individual case, for which reason it cannot be inferred that there are systematic cancellations of the registration of trade unions; and (iii) in its ruling C-096/93, the Constitutional Court considered that section 380 of the Substantive Labour Code complied with *Article 4* of the Convention, which prohibits the administrative dissolution or suspension of trade union organizations. The Committee notes that the CUT and CTC: (i) allege once again that the very short time limits set out in section 380(2) of the Substantive Labour Code do not provide adequate procedural guarantees to unions; (ii) various recent cases show that certain enterprises make use of the expedited procedures to endeavour to try and eliminate trade unions in reprisal for engaging in allegedly unlawful work stoppages; and (iii) call for a review of the Substantive Labour Code to limit the current possibility to dissolve trade unions for reasons and through procedures that are incompatible with the Convention.

The Committee takes due note of the elements advanced by the Government concerning the procedure established by section 380(2) of the Substantive Labour Code, and particularly the existence of a right of appeal with suspensive effect. The Committee also notes that the trade union confederations refer in their observations to court procedures on the basis of section 380(2), but not to dissolution decisions under the procedure. The Committee also observes that: (i) the time limits set out in section 380(2) for trade unions subject to action for their dissolution to put forward their defence and possibly to appeal against a decision adopted by a court of first instance are extremely short (five days in each case); and (ii) the CUT and CTC also denounce the reasons for which the expedited procedure for the judicial dissolution of a trade union may be set in motion, and particularly alleged unlawful work stoppages. ***Recalling once again that the cancellation of trade union registration constitutes an extreme form of interference that must be confined to serious violations of the law after exhausting other less drastic means of action for the organization as a whole and that it is important for such measures to be accompanied by all the necessary guarantees that can only be ensured by normal judicial procedures, the Committee requests the Government to indicate, on the one hand, the reasons that could justify the application of the very short procedural time limits set out in section 380(2) of the Substantive Labour Code and, on the other, the extent to which a work stoppage that is considered to be unlawful can constitute a reason for the dissolution of a trade union.***

*Articles 3 and 6. Right of workers' organizations to organize their activities and to formulate their programmes. Legislative issues.* The Committee recalls that for many years it has been referring to the need to adopt measures to amend the legislation in relation to: (i) the prohibition of strikes by federations and confederations (section 417(i) of the Substantive Labour Code) and in a very broad range of services that are not necessarily essential in the strict sense of the term (section 430(b), (d), (f) and (h); section 450(1)(a) of the Substantive Labour Code; Taxation Act 633/00 and Decrees Nos 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963, and 57 and 534 of 1967); and (ii) the possibility to dismiss workers who have intervened or participated in an unlawful strike (section 450(2) of the Substantive Labour Code), including in cases in which the unlawful nature of the strike is a result of requirements that are contrary to the provisions of the Convention.

With reference to the prohibition of strikes in a series of services that are not necessarily essential in the strict sense of the term, the Committee notes that the Government states, firstly, that the right to strike, even though it is a fundamental right of trade union organizations, is not an absolute right, and that it may therefore be subject to limitations as in the case of areas where essential public services are provided. The Commission further notes that the Government reports on the examination by the House of Representatives of Bill No. 071 of 2019 amending the Substantive Labour Code with a view to harmonizing the right to strike with the Conventions on freedom of association of the International Labour Organization, which was transmitted to the House of Representatives on 24 July 2019 and had its first reading on 17 February 2020. The Government indicates that, in its explanations introducing the Bill, the Ministry of Labour considered it necessary to define essential public services and that the Bill was discussed by the Standing Committee for Dialogue on Wage and Labour Policies. In this regard, the Committee notes that the Government states that there is currently no tripartite consensus to carry out the legislative amendments requested by the workers' federations with regard to strikes and that, on this point, it is appropriate to take into account both the position of the trade union organizations and that of the employers' organizations. The Committee notes that the Government finally describes in detail ruling No. SL 1680-2020 of 24 June of 2020 of the Supreme Court of Justice respecting a strike in the health sector and emphasizes that it: (i) indicates that strikes are not prohibited in the whole health sector, but strictly and exclusively in those services the interruption of which would really endanger the life or health of the population; (ii) changes its criteria and considers that the procedure established in sections 444 and 445 of the Substantive Labour Code, which establishes a series of requirements for the exercise of the right to strike, only applies to contractual strikes seeking the conclusion of collective agreements; and (iii) considers that the procedure cannot be applied to other types of strikes, such as those attributable to employers, protesting against policy or sympathy strikes, as sections 444 and 445 were adopted prior to

the 1991 Constitution at a time when the legislator had not considered types of strikes other than contractual strikes.

The Committee notes that the ANDI, after expressing the view that the right to strike is not covered by the Convention, once again expresses the opinion that Colombian legislation and case law on strikes in essential services are fully satisfactory and that the country has an independent judicial system which examines each case in the event of disputes between employers and workers. The Committee finally notes that the CUT and CTC also refer in their observations to ruling No. SL 1680-2020, in which respect they emphasize in particular that the Supreme Court: (i) recognizes the right to strike as a fundamental human right; and (ii) takes as a basis the position of the supervisory bodies of the ILO in examining whether, in the specific case before it, the work stoppage effectively and directly endangered the life, health or personal safety of the population. The Committee notes that the CUT and CTC also affirm that: (i) the ruling only applies between the parties and, as it was issued by a court of cassation, does not affect the standing of the legislative provisions on the subject; (ii) up to now, there has been no legislative proposal by the Government to amend the legislative provisions that restrict and are in violation of the right to strike; and (iii) although the examination is continuing of Bill No. 071 of 2019, proposed by the trade union confederations to bring the national legislation on the right to strike into conformity with international ILO standards, the Government majority has prevented discussion of the Bill and a vote on it with the aim of shelving it for a second time.

The Committee takes due note of the observations made by the Government and the social partners. The Committee notes with ***interest*** ruling No. SL 1680-2020 of the Supreme Court, provided by the Government and the trade union confederations, which is based on the fundamental nature of the right to strike for the application and interpretation of legal provisions establishing the conditions for its exercise and setting its limits. In this regard, the Committee recalls that in its previous comment it noted that both the Constitutional Court, in relation to the oil sector, and the Supreme Court, with regard to the various services defined as essential in the legislation, have called for a revision of the legislation to better limit the restrictions imposed on the exercise of the right to strike. However, the Committee continues to note that no specific progress has been made with the legislative reforms requested by the Committee in relation to strikes in essential services. The Committee recalls that in its previous comment it indicated in this regard that it considers that: (i) essential services in which the right to strike may be restricted or prohibited are those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; and (ii) although the concept of essential services is not absolute, the Committee has considered that sectors such as oil and public transport do not constitute essential services in the strict sense of the term, but are public services of overriding importance in which the maintenance of a minimum service may be required. ***The Committee therefore firmly expects that the Government will take the necessary measures in the near future to revise the legislative provisions referred to previously respecting essential services as indicated in its comments. The Committee requests the Government to provide information on any progress made in this regard and reminds it that it may have recourse to the technical assistance of the Office.***

With reference to section 417 of the Substantive Labour Code, which prohibits federations and confederations from calling strikes, the Committee notes the Government's indication that the role of federations and confederations is not essentially to take up a position in relation to a labour dispute concerning a specific enterprise or economic activity, but to represent and promote trade union interests in general, without the intention of exercising the right to strike. The Committee notes that both the Government and the ANDI also refer once again to rulings Nos C-797 of 2000 and C-018 of 2015, in which the Constitutional Court emphasized that federations and confederations discharge the functions of providing advisory services to their member organizations and that, in the context of an economic dispute with an employer based on a set of claims, it is constitutionally justified for federations and confederations to be excluded from a decision to call a strike.

On the other hand, noting the persistent criticisms made by national and international trade union confederations concerning the prohibitions established in section 417 of the Substantive Labour Code, the Committee recalls once again that, under the terms of *Article 6* of the Convention, the guarantees of *Articles 2, 3* and *4* apply fully to federations and confederations, which must therefore be able to determine their programmes in full freedom. The Committee also recalls that, in accordance with the principle of trade union independence as set out in *Article 3* of the Convention, it is not for the public authorities to determine the respective roles of first-level unions and of the federations and confederations to which they are affiliated. Finally, the Committee emphasizes that, as indicated in ruling No. 1680 of 2020 of the Labour Chamber of the Supreme Court, which is broadly described by the Government in its report, the right to strike is not limited to collective disputes relating to the negotiation of an enterprise collective agreement, and therefore in situations in which the defence of the collective interests of workers goes beyond the scope of a single enterprise it is especially important for federations and confederations to be accorded all the guarantees envisaged in the Convention. ***In light of the above, the Committee once again requests the Government to take the necessary measures in the near future to amend section 417 of the***

***Substantive Labour Code, which prohibits the right to strike of federations and confederations. The Committee requests the Government to provide information on any developments in this regard.***

Finally, the Committee notes the information provided by the Government on the examination by the international affairs subcommittee of the Standing Committee for Dialogue on Wage and Labour Policies of some of the subjects raised in the present comment. ***The Committee once again hopes that the work of the subcommittee will facilitate the adoption of the various measures requested by the Committee to give full effect to the Convention. The Committee recalls that the Government may request the technical assistance of the Office in this regard.***

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

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded to update the examination of the application of the Convention carried out in 2019 on the basis of the supplementary information received from the Government and the social partners this year (see *Articles 1*, *2* and *4* below).

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019 and 16 September 2020, the joint observations of the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), received on 1 September 2019 and 1 October 2020, the observations of the General Confederation of Labour (CGT), received on 5 September 2019, and the joint observations of the ITUC, the Trade Union Confederation of the Americas, CUT and CTC, received on 1 September 2017. The Committee notes that these various observations relate to matters examined by the Committee in the present observation, as well as allegations of violations of the Convention in practice, and in particular allegations of anti-union dismissals in the private sector. The Committee notes the replies of the Government in this regard.

The Committee also takes note of the joint observations of the Colombian Association of Civil Aviators (ACDAC), the ITUC and the CTC, received on 22 March 2019 and the Government's reply thereto. The Committee also takes note of the observations of the International Transport Federation (ITF) and its affiliated organizations: ACDAC, the Colombian Association of Flight Attendants (ACAV) and the Union of Air Transport Workers of Colombia (SINTRATAC) received on 4 September 2019, which concern, on the one hand, facts related to Case No. 3316 before the Committee on Freedom of Association and, on the other hand, issues addressed in this comment.

The Committee finally notes the joint observations of the International Organisation of Employers (IOE) and the National Employers' Association of Colombia (ANDI), received on 30 August 2019 and the observations of the ANDI forwarded by the IOE on 1 October 2020, relating to matters examined within the context of the present observation.

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* In its previous comments, the Committee noted the allegations by the CUT, CTC and CGT concerning the absence of mechanisms to provide effective protection against anti-union discrimination, and particularly: (i) the slowness and ineffectiveness of the examination by the Ministry of Labour of administrative labour disputes; (ii) the absence, with the exception of the procedure for the lifting of trade union protection, applicable solely to trade union leaders, of any expeditious judicial means of protection against acts of anti-union discrimination and interference; and (iii) the lack of protection from the Office of the Public Prosecutor in relation to the application of section 200 of the Penal Code, which criminalizes a series of anti-union acts. In view of the above, the Committee invited the Government, in consultation with the social partners, to launch a comprehensive examination of the means of protection against anti-union discrimination with a view to the adoption of the necessary measures to ensure adequate protection in this regard.

In this regard, the Committee notes that, in their observations of 2019, the national trade union confederations reiterate their previous allegations and that the CUT and CTC specifically allege that: (i) the time taken by the labour administration to examine administrative labour disputes is excessively long, and in certain cases over 1,400 days have passed before the administration takes action; (ii) such long delays can be especially harmful for the protection of trade union rights since, under the terms of section 52 of the Code of Administrative Procedure and Administrative Disputes, the powers of the authorities to impose penalties expires after three years; and (iii) the recently adopted National Development Plan contains provisions that are likely to weaken even further the effectiveness of action by the labour inspection services. The Committee also notes that the CUT and CTC state in their 2020 observations that, of the requests submitted to the labour administration in 2020 by trade unions or by workers, less than 5 per cent are being investigated and only 1 per cent have progressed towards penalties for the employer's conduct.

The Committee notes the information provided by the Government on the institutional initiatives adopted to combat anti-union violence and on the application of section 200 of the Penal Code, which are examined within the context of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee also notes that the Government adds in its comments to the 2019 observations of the workers' organizations that: (i) in order to improve the procedures and time frames for administrative investigations by labour inspectors, technical inspection tools were designed to promote the standardization of investigation and sanctioning procedures; and (ii) the recently adopted provisions modifying the administrative sanctioning procedure in labour matters and that are criticized by the trade union confederations are intended to decongest administrative labour actions by suspending the administrative procedure when those investigated undertake to implement the required corrective measures within a reasonable time. The Committee also notes that the Government, in its supplementary information of 2020, provides data on the functioning of the labour inspectorate in general regarding information systems used by the labour inspectorate to record and organize its investigations and ensure the enforcement of fines, and also information on virtual training initiatives for inspectors. The Committee finally notes that, in its comments on the 2020 observations of the CUT and the CTC, the Government denies that there is any inefficiency in the performance of the labour inspectorate in the area of anti-union discrimination, since significant progress has been made in the protection of these rights through the corresponding administrative investigations. The Government states in this respect that, between 1 January and 15 October 2020, 47 administrative labour complaints have been filed regarding anti-union acts, all of which are currently in the preliminary investigation phase.

While duly noting this information, the Committee observes that the Government provides limited information concerning the concrete results achieved by the labour administration in response to complaints of anti-union discrimination, that it does not provide comments on the role of the labour courts in this respect, and that it does not refer to the conduct of a comprehensive examination of the existing means of protection against anti-union discrimination. ***Recalling the fundamental importance of protection against anti-union discrimination for the effective exercise of freedom of association, the Committee urges the Government, in consultation with the social partners, to launch in the near future a comprehensive examination of the means of protection against anti-union discrimination with a view to the adoption of the necessary measures to ensure rapid imposition of effective sanctions in the event of the commission of anti-union acts. The Committee trusts that the Government will report any developments in this regard in its next report.***

*Articles 2 and 4. Collective accords with non-unionized workers.* The Committee recalls that it has been requesting the Government to take measures since 2003 to ensure that collective agreements with non-unionized workers (collective accords) can only be concluded in the absence of trade union organizations. The Committee notes that the Government indicates once again in its various reports that, in accordance with the legislation and the case law of the Constitutional Court: (i) both collective accords (concluded with non-unionized workers) and collective agreements (concluded with trade unions) are instruments of collective bargaining, on the understanding that the recognition of the right to collective bargaining should not exclude non-unionized workers; (ii) employers are free to conclude collective accords with non-unionized workers, except where there is a union representing at least one-third of the personnel (section 481 of the Substantive Labour Code); and (iii) the terms and conditions negotiated in collective accords and agreements have to be equal to prevent any anti-union discrimination and any breach of the principle of equality. The Committee notes that the Government adds in the information provided in 2019 that: (i) there were 639 collective accords in force in the country in 2019; (ii) the number of collective accords concluded per year has been reduced by 53 per cent between 2015 (372 accords created) and 2018 (198); (iii) 115 collective accords were deposited from January to September 2019; (iv) Resolution 3783 of 29 September 2017 of the Ministry of Labour granted functions to the Special Investigation Unit of the Ministry of Labour to investigate the misuse of collective accords; and (v) the Special Investigation Unit had undertaken 27 investigations into the improper use of collective accords, with 22 cases at the stage of preliminary investigation, while charges have been brought in three cases, in one of which the charges were upheld and in another a conviction was handed down. The Committee also notes that the ANDI agrees with the Government's indication and considers that workers must be free to choose the form of association that they wish to have for the purposes of negotiating collectively. The ANDI also emphasizes that collective accords cannot be used to elude trade union membership. The Committee also notes in this regard the updated information supplied by the Government in its supplementary report of 2020 and in the replies to the observations of the trade union confederations. In particular, the Government indicates that: (i) the Special Investigation Unit of the Ministry of Labour is currently conducting seven investigations into the improper use of collective accords (one at the stage of upholding of charges, three at the stage of preliminary investigation, and three at the stage of notification of the first decision); and (ii) a total of 141 investigations on this subject are under way at the regional departments of the Ministry of Labour.

The Committee also notes the indication by the CGT that: (i) although collective accords are governed by the same provisions of the Substantive Labour Code as collective agreements in terms of the collective

bargaining process, in most cases there is no such bargaining, as the accord is drawn up directly by the enterprise or its trusted personnel; (ii) collective accords are usually promoted to prevent the independent organization of workers in a union and their conclusion usually has the effect of drastically reducing the number of unionized workers; and (iii) despite the case law of the Constitutional Court in this regard, the labour administration and the Office of the Public Prosecutor fail to investigate complaints of anti-union practices in which collective accords are known as "voluntary benefit plans", an assertion denied by the Government in its comments to the observations of the trade union confederations. Finally, the Committee notes that the CUT and CTC: (i) stated in their 2019 observations that 68 administrative complaints were lodged for the improper use of collective accords between 2014 and 2017, of which 35 have been shelved, 24 are still under investigation, and sanctions have been imposed in only nine cases; (ii) stated in their 2020 observations that a major increase had been recorded in 2019 in the number of collective accords concluded (222) by comparison with 2018 (198) and 2017 (141) and that the number of administrative sanctioning procedures for misuse of collective accords being handled by the Special Investigation Unit of the Ministry of Labour is derisory if compared with the number of collective accords filed in recent years; and (iii) referred to the Supreme Court ruling SL 3597-2020 of 16 September 2020 in which the Supreme Court condemned an airline company for anti-union acts committed against the company union and asserted that this court decision highlights how collective accords or voluntary benefit plans entered into with non-unionized workers would be used to violate freedom of association.

Noting that there has been no progress in giving effect to its comments, the Committee is bound to recall once again that in *Article 4* the Convention recognizes, as the parties to collective bargaining, employers or their organizations, on the one hand, and workers' organizations, on the other, in recognition that the latter offer guarantees of independence that may be absent in other forms of association. The Committee has therefore always considered that direct bargaining between the enterprise and unorganized groups of workers, in avoidance of workers' organizations, where they exist, is not in accordance with the promotion of collective bargaining, as envisaged in *Article 4* of the Convention. Moreover, based on the situation in various countries, the Committee has observed that in practice the negotiation of terms and conditions of employment and work by groups that do not offer sufficient guarantees to be considered as workers' organizations can be used to undermine the exercise of freedom of association and weaken the existence of workers' organizations with the capacity to defend the interests of workers independently through collective bargaining. ***In light of the above, the Committee once again requests the Government to take the necessary measures to ensure that the conclusion of collective accords with non-unionized workers (pactos colectivos) can only be possible in the absence of trade union organizations. The Committee requests the Government to report any developments in this regard.***

*Article 4. Personal scope of collective bargaining. Apprentices.* In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the remuneration of apprentices is not excluded by law from the scope of collective bargaining. The Committee notes the Government's indication that: (i) Act No. 789 of 2002, which establishes the figure of the apprenticeship contract, clearly states that apprentices are students and not workers; (ii) therefore, an apprenticeship contract is not a contract of employment, but is a special contract under labour legislation subject to its own rules, and not the provisions of the substantive Labour Code; and (iii) in ruling C-038 of 2004, the Constitutional Court found that apprentices are not workers in the strict sense and the exclusion of their remuneration from the scope of collective bargaining is a proportional restriction to the requirement imposed by law for enterprises to recruit a certain number of apprentices. ***Observing that, according to the ruling referred to above, apprentices are able to negotiate their remuneration on an individual basis, and recalling once again that the Convention does not exclude apprentices from its scope of application and that the parties to collective bargaining should therefore be able to decide to include the subject of their remuneration in their collective agreements, the Committee once again requests the Government to take the necessary measures to ensure that the remuneration of apprentices is not excluded by law from the scope of collective bargaining.***

*Subjects covered by collective bargaining. Exclusion of pensions.* The Committee recalls that, in the same way as the Committee on Freedom of Association in Case No. 2434, it has had the occasion to comment on several occasions on the impact of the reform of Article 48 of the Constitution of Colombia by Legislative Act No. 01 of 2005 on the application of the present Convention, as well as on the Collective Bargaining Convention, 1981 (No. 154). In its previous comment, recalling that the establishment by law of a general compulsory pensions scheme is compatible with collective bargaining by means of a complementary system, the Committee requested the Government to take the necessary measures so that the parties to collective bargaining, in both the private and the public sectors, are not prohibited from improving pensions through supplementary benefits.

The Committee notes the Government's indication in this regard that Legislative Act No. 1 of 2005 prohibits, from the entry into force of the Legislative Act, the establishment in accords, collective labour agreements, awards or any legal acts of pension conditions that differ from those set out in the laws

governing the General Pensions System, although this prohibition does not prevent the parties to collective bargaining from being able, in both the private and the public sectors, to improve pensions through supplementary benefits based on voluntary savings, which do not give rise to different pension conditions from those set out by the General System, but increase the capital necessary to obtain a better pension through individual efforts. ***The Committee takes due note of these indications and requests the Government to provide specific examples of collective agreements which provide for supplementary pension benefits.***

*Promotion of collective bargaining in the public sector.* The Committee notes with ***satisfaction*** the Government's indication of the conclusion with all the confederations in the country of a new National State Agreement covering 1,200,000 workers in the public sector, which provides for a wage rise of 1.32 per cent above the inflation rate for 2019 and 2020, as well as a series of other improvements at the national and sectoral levels. The Committee notes that the three national trade union confederations (although the CUT and CTC indicate certain difficulties in relation to local bodies) welcome the significant progress in collective bargaining in the public sector, which is due to the existence of multi-level bargaining with an *erga omnes* effect at the national level. According to the trade union confederations, this mechanism should be extended to collective bargaining in the private sector.

*Promotion of collective bargaining in the private sector.* The Committee recalls that, in its previous comments, it noted with concern the very low level of coverage of collective bargaining in the private sector, as indicated by the national trade union confederations. The Committee also noted the indication by the trade union confederations that a series of both legal and practical obstacles and inadequacies resulted in the complete absence of collective bargaining above the enterprise level, which in turn contributed to the very low coverage of collective bargaining in the private sector. The Committee requested the Government to take the necessary measures to promote the use of collective bargaining, in accordance with the Convention.

The Committee notes the Government's indication that: (i) according to data from trade union registers, detailed by sector of activity and regions, there are 781 collective agreements in force in the private sector; (ii) the number of collective agreements deposited between January and September 2019 was 268; between 1 January and 15 October 2020, a total of 158 collective agreements were deposited; (iii) the Ministry of Labour does not yet have a system enabling it to determine the coverage rate of collective bargaining but, with the support of Canada and the Office, it is developing a system for the registration of collective accords, trade union contracts and collective agreements which will provide such information by the end of 2019; (iv) the provisions of the Substantive Labour Code relating to the extension of collective agreements show that it is possible to bargain at the sectoral level; (v) although there is no text specifically regulating bargaining at the branch level, there is a successful case of collective bargaining in the country in the banana sector in the Urabá region covering 15,000 of the 17,600 workers concerned; and (vi) with technical assistance from the Platform of Social Organizations for Decent Work and the ILO, the CUT and the CTC began a major project to disseminate multilevel collective bargaining in the country at the end of the second half of 2018. The Committee also notes the Government's indication that, with a view to ensuring that unions have a strong capacity for negotiation and guaranteeing that these procedures are flexible and effective, it is proposed to amend Decree No. 089 of 2014, which promotes unified bargaining within the enterprise, to make it compulsory to submit unified claims and establish a single negotiating committee composed of members of all the trade unions. The Committee notes the Government's indication that, after referring the proposed amendment to the Office for comments, tripartite consultations are being held on its content.

The Committee also notes the indication by the CUT and CTC in their 2019 observations that: (i) according to the estimates of the National Trade Union School, only 1.75 per cent of the economically active population and 3.67 per cent of employees are covered by collective agreements; (ii) the absence of regulations governing collective bargaining at the branch level in the private sector renders it impossible in practice, which makes a decisive contribution to the very low coverage level; and (iii) the Organisation for Economic Co-operation and Development (OECD) Employment, Labour and Social Affairs Committee has requested the Government to promote a system of bargaining on two levels and to include provisions for sectoral bargaining in the Labour Code.

Noting with ***regret*** that, according to the data provided by the trade union confederations, the level of coverage of collective bargaining in the private sector continues to be very low, the Committee notes a significant contrast in this regard with the situation in the public sector. The Committee recalls that: (i) under the terms of *Article 4* of the Convention, it is the responsibility of the Government to take measures appropriate to national conditions, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations, on the one hand, and workers' organizations, on the other, with a view to the regulation of terms and conditions of employment by means of collective agreements; and (ii) in accordance with Article 5(2)(d) of Convention No. 154, which has been ratified by Colombia, the Government is required to ensure that collective

bargaining is not hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules.

While welcoming the Government's initiative to provide a framework for more flexible collective bargaining procedures at the enterprise level in a context of trade union pluralism, the Committee considers it necessary for the Government to address in the near future, in consultation with the social partners, all of the aspects which could hamper the effective promotion of collective bargaining in the private sector, as indicated in the Committee's comments concerning the Convention. ***Encouraged by the results achieved in the public sector, the Committee requests the Government, in consultation with the social partners, to take all measures in the near future, including legislative measures where appropriate, to promote the use of collective bargaining in the private sector at all appropriate levels. The Committee requests the Government to provide information on the progress achieved in this regard and recalls that it may have recourse to the technical assistance of the Office.***

*Settlement of disputes. Committee for the Handling of Conflicts referred to the ILO (CETCOIT).* The Committee notes the information provided in 2019 and 2020 by the Government and the ANDI and in 2020 by the CUT and CTC on the activities of the CETCOIT, a tripartite body for the resolution of disputes relating to freedom of association and collective bargaining. The Committee notes with ***interest*** the Government's indication that: (i) between 2012 and 2017, the CETCOIT examined 191 cases, reaching 123 agreements; (ii) following the unanimous appointment of a new facilitator in April 2018, the CETCOIT is continuing its work effectively, and examined 24 cases in 2018, reaching 14 agreements; (iii) from 2012 to 2019, the CETCOIT has achieved the conclusion of agreements in 63 per cent of the cases examined; and (iv) in the context of the COVID-19 pandemic, the CETCOIT has continued to meet, achieving in particular in the 18 meetings held in 2020 the conclusion of 11 agreements and seven follow-up protocols. Lastly, the Committee notes that: (i) the ANDI, CUT and CTC indicate that the CETCOIT is an example of good practice in social dialogue which reflects the will of all the tripartite partners to make progress in seeking solutions to disputes; and (ii) at the same time, the CUT and CTC add that workers may be demotivated because of not feeling the necessary support for the agreements achieved and because of the lack of any penalties associated with this kind of extrajudicial mechanism in the event of non-compliance. ***The Committee requests the Government to continue providing information in this regard.***

***Observing that, in its report on Convention No. 87, the Government indicated that the international affairs subcommittee of the Standing Committee for Dialogue on Wage and Labour Policies will follow-up on the examination of the comments made by the Committee of Experts on the application of the Conventions ratified by Colombia, the Committee hopes that the work of the subcommittee will facilitate the adoption of the various measures requested by the Committee to give full effect to the Convention. The Committee recalls that the Government may request technical assistance of the Office in this regard.***

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

***[The Government is asked to reply in full to the present comment in 2021.]***

## Comoros

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

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments.

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

*Articles 4 and 6 of the Convention. Promotion of collective bargaining in the private and public sectors (employees of public enterprises and public servants not engaged in the administration of the State).* In its previous comments, the Committee once again regretted the absence of progress in relation to collective bargaining which, according to the CTC, was not structured and had no framework at any level, and particularly that joint bodies in the public service had still not been established. The Committee notes that the CTC in its 2017 observations makes particular reference to decrees and implementing orders covering the Higher Council of the Public Service, the Joint Commission and the Medical Commission established to provide a framework for bargaining, but which have still not been signed following their preparation in 2015, thereby opening the way for regulations and measures which are not in conformity with the law to the prejudice of employees of the public service. ***While taking note of the request made by the Government in its report for technical assistance, the Committee urges the Government to take the necessary measures to promote collective bargaining in both the private and the public sectors (employees of public enterprises and public servants not engaged in the administration of the State). The Committee requests the Government to provide information on this subject.***

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

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

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

## Congo

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

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

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

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

## Costa Rica

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020) which concerns matters addressed in the direct request, which accompanies this observation.

The Committee also notes the observations of the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) transmitted by the Government, as well as the observations of the International Trade Union Confederation (ITUC), received on 16 September 2020, the Confederation of Workers Rerum Novarum (CTRN) and the National Association of Nursing Professionals (ANPE), both received on 30 September 2020, all relating to the matters raised by the Committee in its direct request. ***The Committee requests the Government to provide its comments in relation to the observations of the CTRN, ITUC and ANPE, as well as in relation to the observations of the CTRN of 2019.***

The Committee reiterates the content of its observation adopted in 2019, which is repeated below.

In its latest comment, the Committee took note of the adoption of the Labour Proceedings Reform Act No. 9343 and noted with satisfaction that the Act amended the percentage of workers required to declare a strike. The Committee notes the Government's indication that, in November 2017, Executive Decree No. 40749 was issued, which regulates the call to vote required in order to exercise the right to strike, in accordance with the provisions of the Labour Proceedings Reform Act.

*Pending legislative issues*. *Articles 2 and 4 of the Convention*. The Committee recalls that for years its comments have referred to the following issues:

– *Registration of trade unions and acquisition of legal personality*. The Committee indicated to the Government the need to amend section 344 of the Labour Code to establish a short, specific period for the administrative authority to reach a decision on the registration of trade unions, after which, in the absence of a decision, they are deemed to have obtained legal personality. In this regard, the Committee notes the Government's indication that, although this situation has been remedied both in practice and in administrative law, the Committee's comments will be taken into account.

– Right of organizations freely to elect their representatives. Obligation for the trade union assembly to appoint the executive board each year (section 346(a) of the Labour Code). The Committee has drawn the attention of the Government to the need to amend section 346(a) of the Labour Code, which requires the executive board of trade unions to be appointed every year. In this regard, the Committee notes the Government's indication that although this article has not been amended, the Register of Civil Organizations does not apply this provision and the Ministry of Labour and Social Security, in practice, guarantees organizations full autonomy in determining the term of their executive boards.
– Prohibition on foreigners from holding office or exercising authority in trade unions (article 60(2) of the Constitution and section 345(e) of the Labour Code). The Committee indicated to the Government the need to amend article 60(2) of the Constitution and section 345(e) of the Labour Code, which prohibit foreigners from holding office or exercising authority in trade unions. The Committee recalls that a proposed constitutional reform had been submitted to the plenary of the Legislative Assembly to resolve this issue (legislative file No. 17804). The Committee notes the Government's indication that the above-mentioned proposed constitutional reform was shelved on 17 October 2018. The Government indicates that this decision followed a decision made by the Speaker of the Legislative Assembly, who ordered that bills that had exceeded the four-year deadline on that date should be shelved, in conformity with section 119 of the Regulations of the Legislative Assembly. The Government also indicates that it will undertake an assessment to consider the submission of a new constitutional reform proposal in the terms referred to by the Committee. The Government adds that, in practice, the Department of Civil Organizations in the Ministry of Labour and Social Security registers the appointment of foreigners to the executive bodies of trade unions when it is demonstrated that they comply with the legal requirements.

***Observing that no specific progress has been made in relation to the matters indicated, the Committee once again requests the Government to take all necessary measures to amend the above-mentioned provisions of the Labour Code and the Constitution in conformity with the Convention, as well as with the practice followed by the authorities. It requests the Government to provide information on developments in this respect.***

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

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

The Committee notes the observations of the Workers' Union of Banco Popular (SIBANPO), the Confederation of Workers Rerum Novarum (CTRN), as well as the joint observations of Juanito Mora Porras Trade Union Federation (CSJMP) and the National Association of Nursing Professionals (ANPE) received on 29 and 30 September, and 1 October 2020 respectively. The Committee notes that, in addition to addressing the matters examined in this comment, the observations refer to the impact that Act No. 9635 on strengthening public finances, in force since July 2019, and Bill No. 21336 on public employment would have on the exercise of the rights guaranteed by the Convention. ***Noting the repeated observations of trade union organizations denouncing the restrictions that run counter to the Convention to the right to collective bargaining of public servants not engaged in the administration of the State, the Committee requests the Government to provide its comments in this respect. It also requests it to provide information on the development of the aforementioned Bill on public employment and trusts that within its framework the guarantees of the Convention will be taken fully into account.***

As it has not received supplementary information from the Government, the Committee reiterates the content of its comment adopted in 2019 and repeated as follows:

The Committee notes the Government's replies to the 2014 observations of the International Trade Union Confederation (ITUC) and the 2016 observations of the CTRN. The Committee also notes the detailed observations of the CTRN, received on 31 August 2019, related to matters addressed by the Committee in the present comment. The Committee further notes the joint observations of the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) and the International Organisation of Employers (IOE), received on 2 September 2019, and notes the Government's reply to those observations.

*Articles 1 and 2 of the Convention. Adequate protection against acts of anti-union discrimination and interference.* In its most recent comment, the Committee noted with satisfaction that Act No. 9343 on reforming labour procedures, which entered into force in July 2017, introduced amendments with the objective of making judicial procedures relating to acts of anti-union discrimination more expeditious and effective. The Committee notes the Government's indication that this Act introduced a special, expedited and preventive procedure for cases of anti-union discrimination, which are dealt with as a matter of priority and following a specific procedure, both by the administrative and judicial authorities. The Committee notes the statistical data provided by the Government and notes that: (i) between 2016 and 2019, the labour inspectorate processed a total of 67 cases of anti-union harassment or unfair labour

practices; (ii) the procedures for these cases were before the administrative authorities for 104 days on average; (iii) between July 2017 and May 2019, a total of 207 files related to special protection cases were submitted to the judicial authorities, 59 of which were for anti-union discrimination; and (iv) on average, procedures for anti-union discrimination cases were before the judicial authorities for 128 days, from the submission of the file until the ruling of the Second Chamber of the Supreme Court of Justice. Recalling that, in previous years, the Committee noted that the slowness of procedures in cases of anti-union discrimination resulted in a period of not less than four years being required to obtain a final court ruling, the Committee notes with ***satisfaction*** the statistical information provided by the Government, which bears witness to the practical impact of the procedural reform. The Committee also notes that the Government hopes to be able to provide information on the nature of the penalties and compensation at a later date. ***The Committee, encouraged by the developments regarding the length of procedures, requests the Government to continue providing statistics on the number of cases of discrimination examined and the length of the procedures, and also to provide information on the nature of the penalties and compensation imposed.***

*Article 4. Collective bargaining in the public sector. Public servants not engaged in the administration of the State.* The Committee recalls that, for many years, it has been expressing concern with regard to the frequent use of legal actions for unconstitutionality to challenge the validity of collective agreements concluded in the public sector. In its last comment, the Committee had taken note that the Office of the Comptroller General of the Republic had lodged a legal action for unconstitutionality against a collective agreement of a public sector bank and that the legal action was still pending. The Committee notes that this issue was examined recently by the Committee on Freedom of Association in Case No. 3243 and refers to the recommendations made by that Committee in its 391st report of October 2019. The Committee also notes the Government's indication that it is continuing to implement the policy for the revision of collective agreements in the public sector, initiated in 2014, with the objective of avoiding recourse to legal procedures and seeking, through social dialogue, to streamline and adapt them to the country's fiscal reality and austerity policy. The Government further indicates that the parties, after denouncing their collective agreements, renegotiate a new agreement, in line with the parameters of reasonableness and proportionality established by the Constitutional Chamber, which diminishes the possibility of the collective agreements being challenged later through constitutional action. In this regard, the Government reports that, during 2018 and until May 2019, the Department of Labour Relations of the Directorate of Labour Affairs approved 19 collective agreements in the public sector. The Committee also notes that, in its observations, the CTRN denounces a series of violations to the right of public servants to negotiate collectively their terms and conditions of employment. The Committee notes that the issues to which the CTRN refers to in its observations, coincide with the issues that are the subject of a representation made under article 24 of the ILO Constitution, which is pending.

The Committee emphasizes that, for many years it has been examining a number of obstacles to the full implementation of *Article 4* of the Convention in the country's public sector. The Committee recalls, in this regard, that all workers in the public sector who are not engaged in the administration of the State (for example, employees in public enterprises, municipal employees and those in decentralized entities, public sector teachers and transport sector personnel) shall enjoy the right to collective bargaining, including with respect to wages, and that while the special characteristics of the public service require some flexibility, there are mechanisms through which compliance with budgetary limitations can be reconciled with the recognition of the right to collective bargaining.

***Recalling its previous observations, the Committee trusts that the Government, in consultation with the representative trade unions in the sector, will take the measures at its disposal to strengthen the right to collective bargaining of public servants not engaged in the administration of the State. The Committee requests the Government to report on any action taken in this regard.***

*Direct agreements with non-unionized workers.* In its previous comments, the Committee noted with concern that, while the number of collective agreements in the private sector remained very low, the number of direct agreements with non-unionized workers was very high. The Committee also noted Ruling No. 12457-2011, which confirmed that direct agreements could not prejudice the negotiation of collective agreements and, consequently, the exercise of freedom of association. In this respect, the Committee notes the Government's indication that compliance with this ruling is mandatory, for both the administrative and judicial authorities and that, accordingly, on 2 May 2012, the labour inspectorate issued Circular No. 018-12, addressed to all the officials of the labour inspectorate, indicating that, in the event that there is a trade union organization and a permanent workers' committee, the inspector shall ensure that there is no violation of freedom of association, and in the event of any conflict or discord that warrants any type of negotiation or conciliation, the inspector shall inform the Directorate of Labour Affairs so that it may follow the applicable procedure under the terms of Ruling No. 12457-2011. The Committee takes note of the statistical data provided by the Government and notes that: (i) between 2014 and April 2019, an average of 30 collective agreements per year were concluded in the private sector and 80 collective agreements per year in the public sector; and (ii) in the period from 2014 to August 2018, an average of

160 direct agreements per year were concluded. The Committee also notes that, while in 2018 some 83 collective agreements were concluded in the public sector and 33 collective agreements in the private sector, covering 153,037 and 14,346 workers respectively, in the same year, 180 direct agreements were concluded, covering 48,239 workers. The Commission further notes that the number of direct agreements has increased over the years: from 118 direct agreements in 2014, to 180 direct agreements in 2018. The Committee recalls that it has always considered that direct bargaining between the enterprise and unorganized groups of workers, in avoidance of workers' organizations, where they exist, is not in accordance with the promotion of collective bargaining, as set out in *Article 4* of the Convention. The Committee has also noted that in practice the negotiation of terms and conditions of employment and work by groups which do not fulfil the guarantees required to be considered workers' organizations can be used to undermine the exercise of freedom of association and weaken the existence of workers' organizations with the capacity to defend the interests of workers independently through collective bargaining. ***Noting that the number of direct agreements has increased considerably in comparison to the number of collective agreements in the private sector, the Committee requests the Government to take all necessary measures, including of a legislative nature, to step up the promotion of collective bargaining with trade union organizations within the meaning of the Convention. The Committee also requests the Government to provide information on the impact of Circular No. 018-12 of the Labour Inspectorate, as well as any other measures adopted in light of Ruling No. 12457-2011.***

## Croatia

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

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee takes due note of the information provided by the Government on measures undertaken to assist the economy and mitigate the social and economic consequences of the COVID-19 pandemic. It further notes that the Government indicates that these measures were adopted in intense dialogue with trade unions and employers' associations and that no changes were introduced to the labour legislation. According to the Government, protection of workers and trade unions has thus remained unchanged and measures taken did not diminish the rights deriving from the Convention. The Committee also notes the information concerning the use of collective bargaining in the context of the COVID-19 pandemic, elements of which are being examined in the present comments.

The Committee had previously noted the observations of the International Trade Union Confederation (ITUC) received on 1 September 2018, according to which private and public sector employers would undermine the collective bargaining process by delaying negotiations, promoting negotiations with yellow unions and concluding agreements directly with works councils, as well as the Government's reply thereto. The Committee requested the Government to provide details on the relationship between the companies' working regulations and the collective agreements negotiated with trade unions. The Committee notes the Government's assertion that: (i) according to the legislation, the employer has an obligation to consult the works council in the process of adopting the company's working regulations; (ii) working regulations are an added value for the protection of workers, especially in sectors with low trade union density (small and medium sized companies) where they constitute the only possibility for workers to regulate their working conditions; (iii) the existence of working regulations does not have any negative impact on the collective bargaining process and trade unions can negotiate with the employer conditions more favourable than those established in the working regulations; and (iv) according to section 160 of the Labour Act, written agreements concluded between the employer and the works council on legal rules governing employment matters do not regulate remuneration, working hours and other matters which are as a rule regulated by a collective agreement. The Committee takes note of this information. It also observes that under section 26 of the Labour Act all employers with at least 20 employees must adopt company working regulations which govern, among other things, questions of remuneration and organization of work, as well as any other issues of importance for the workers of the company, if these issues are not regulated by a collective agreement. The Committee understands from the foregoing elements that while the legislation recognizes, where these exist, the primacy of collective agreements concluded with trade unions, both agreements concluded with works councils and working regulations, subject to consultation with works councils, have a material scope which may coincide with that of collective agreements. ***Recalling that direct negotiation between the company and its employees aimed at bypassing sufficiently representative organizations, where they exist, may undermine the principle of promoting collective bargaining, as enshrined in the Convention, the Committee requests the Government to provide detailed information on the respective number of company collective agreements concluded with trade unions and agreements concluded with works councils, specifying in each case the number of workers covered.***

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Rapid appeal procedures.* In its previous comments, the Committee observed with concern that the judicial resolution of anti-union discrimination cases was characterized by excessive delays and urged the Government to take, jointly with the competent authorities, effective measures to significantly accelerate the judicial proceedings in cases of anti-union discrimination. The Committee notes the Government's indication that, at the beginning of 2019, there were 20 pending and seven new civil cases related to anti-union discrimination, out of which eight were resolved during the year (one proceeding lasted up to 12 months while seven lasted more than a year). As a result, there were 19 unresolved cases related to anti-union discrimination at the end of 2019. The Government also states that the amendments to the Civil Procedure Act adopted in 2019 aim at harmonizing case law and will contribute to dispute resolution. ***The Committee trusts that the 2019 amendments to the Civil Procedure Act will contribute to significantly accelerating judicial proceedings in cases of anti-union discrimination and requests the Government to continue providing information on the average duration of the resolution of anti-union discrimination cases.***

*Articles 4 and 6. Collective bargaining of public servants not engaged in the administration of the State.* In its previous comments, the Committee requested the Government to provide updated information on the collective agreements negotiated and signed in the public sector, and to indicate whether the 2 per cent increase in wages of civil and public servants since 2017 was the result of collective bargaining. The Committee notes that the Government indicates that all civil servants (workers employed in the State administration at the central, local and county levels or in other State bodies established to render a civil service) and public servants (workers in State-financed public services both at the central or local levels) are covered by collective agreements. The Government further mentions that, in addition to a basic collective agreement applicable to public servants, specific agreements were concluded in the following sectors: social care; health and health insurance; elementary schools and high schools; science and higher education; cultural institutions financed from the State budget; the Croatian Employment Service and the Croatian Pension Insurance Institute. The Committee welcomes this information and further notes that 83 collective agreements were concluded with the municipality, the town or the county as one of the parties and that most of the state-owned companies are also covered by collective agreements.

As for the 2017 increase in wages, the Committee notes that the Government clarifies that while the increase for civil servants was agreed to in a collective agreement, the raise for public servants was determined by a special Decision based on the Act on Salary Base in Public Services, since there was no agreement between the Government and the unions in the public sector. The Government further indicates that: i) at the end of 2018, an additional increase in salary was agreed to in collective bargaining agreements for both categories of workers; (ii) in 2019, trade unions representing civil and public servants agreed to a further increase in salaries for 2020; (iii) in the context of the COVID-19 pandemic, trade unions in public services agreed to conclude an Annex to the Basic Collective Agreement which states that the increase of the basic salary will be postponed to 2021; and (iv) trade unions in the civil service also agreed to the same postponement in their collective agreement.

***The Committee takes due note of this information and invites the Government to continue to encourage collective bargaining in the public sector, especially for public servants not engaged in the administration of the State, including with respect to remuneration.***

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

## Djibouti

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the General Union of Djibouti Workers (UGTD) and the Labour Union of Djibouti (UDT), received on 23 August 2019, and of Education International (EI), received on 20 September 2019, containing grave allegations of anti-union repression. ***The Committee requests the Government to provide its comments in this respect.***

*Article 3 of the Convention. Right of workers' organizations to organize their administration and activities in full freedom.* In its previous comments, the Committee asked the Government to indicate the reasons for the arrest at Djibouti airport in May 2014 of Mr Adan Mohamed Abdou, Secretary-General of the Labour Union of Djibouti (UDT), who was to attend the 103rd Session of the International Labour Conference (May–June 2014) as an International Trade Union Confederation (ITUC) observer, and whose travel documents and luggage were confiscated. The Government merely indicated that it does not recognize Mr Mohamed Abdou's status as a worker representative as he is an elected Member of Parliament. In its last report, the Government indicates that it is in the process of gathering the necessary information to explain why Mr Mohamed Abdou was prohibited from leaving the country. The Committee recalls that leaders of organizations of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require; moreover, the free movement of these representatives should be ensured by the authorities. ***Noting with regret the failure to provide the***

***requested information more than three years after the events, the Committee expects that the Government will indicate without delay the reasons why Mr Mohamed Abdou was prohibited from leaving the country, which prevented him from participating in the International Labour Conference in May and June 2014, and specify whether this prohibition has been lifted.***

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

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

– section 5 of the Act on Associations, which requires organizations to obtain authorization prior to their establishment as trade unions; and

– section 23 of Decree No. 83-099/PR/FP of 10 September 1983, which confers upon the President of the Republic broad powers to requisition public officials.

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

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

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

## Dominican Republic

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

The Committee notes the joint observations of the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD), received on 1 October 2020, which allege that practical difficulties persist in obtaining the registration of trade union organizations, particularly in the tourist transport sector. ***The Committee requests the Government to send its comments on this matter.***

The Committee also takes note of the supplementary report sent by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020), which does not add any information on the outstanding issues. The Committee therefore reiterates the content of its observation adopted in 2019, which is reproduced below.

The Committee notes the observations of the CNUS, the CASC and the CNTD, of 3 September 2018 and 5 September 2019, addressed in the present observation.

*Application of the Convention in practice.* The Committee duly notes that the Government, in its responses to the observations of 2013 of the International Trade Union Confederation (ITUC) relating to acts of violence and threats against leaders of the National Union of Workers of Frito Lay Dominicana (SINTRALAYDO), indicates that: (i) the investigations conducted did not establish the existence of acts of violence or threats against trade union leaders; (ii) the charges against the company were never reported on the various occasions that the union and company participated in round table negotiations led by the Directorate of Mediation and Arbitration; and (iii) the Labour Inspectorate did, in fact, note unfair practices in the sector and imposed the appropriate penalties. With respect to the 2016 observations of the CASC, CNUS and CNTD on the practical obstacles to obtaining legal personality for trade unions, the Government indicates that in 2013 all registration applications were granted and that between 2014 and 2016 the registration applications of three trade unions were rejected as they did not comply with substantive criteria (they did not corroborate their members' worker status or comply with the minimum number of 20 workers).

*Legislative issues.* The Committee recalls that for a number of years it has been requesting the Government to take the necessary steps to amend the following legislative provisions which are not in conformity with *Articles 2, 3* and *5* of the Convention:

– section 84(I) of the regulations implementing the Civil Service and Administrative Careers Act (Decree No. 523-09), which maintains the requirement to affiliate at least 40 per cent of the total number of

employees enjoying the right to organize in the institution concerned, in order to be able to establish an organization of civil servants;
– section 407(3) of the Labour Code, which requires at least 51 per cent of workers' votes in the enterprise in order to call a strike; and
– section 383 of the Labour Code, which requires federations to obtain the votes of two-thirds of their members to be able to establish confederations.

The Committee also recalls that in its previous comments, it had noted that the Commission for Reviewing and Updating the Labour Code, established in 2013, was at that time engaged in discussions and consultations, that the amendments proposed had been discussed by the Labour Advisory Committee and that on 1 July 2016 a tripartite agreement was signed in order to establish a Round Table on Matters relating to International Labour Standards, the main objective of which is to ensure observance of international labour standards. The Committee notes that, according to the Government, meetings have been held by the Ministry of Labour and the Ministry of Public Administration in the public sector aimed at bringing legislation governing this sector into line with international conventions; that the Commission for Reviewing and Updating the Labour Code is continuing with consultations and discussions in the private sector; and that tripartite meetings have been held with a view to possibly reforming the Code. The Committee also notes that, in their observations of 2018 and 2019, the CASC, CNUS and CNTD criticize the functioning both of the Commission for Reviewing and Updating the Labour Code and the Round Table on Matters relating to International Labour Standards, questioning their effectiveness and claiming that there is a reluctance to engage in dialogue.

***The Committee refers to its observation within the framework of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), relating to the functioning of the Commission for Reviewing and Updating the Labour Code and the Round Table on Matters relating to International Labour Standards. The Committee expresses the strong hope that, through effective social dialogue, the new Labour Code and new legislation governing workers in the public sector will be adopted in the very near future and that, taking into account the Committee's comments, these legislative revisions will be in full conformity with the provisions of the Convention. The Committee requests the Government to provide information on all progress made in this respect and recalls that the Government may, if it so wishes, seek technical assistance from the Office.***

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

The Committee notes the joint observations of the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD), received on 1 October 2020, which denounce ongoing anti-union acts, particularly anti-union dismissals, as well as acts of interference in two enterprises in the poultry sector and the tourist transport sector. In addition, the above-mentioned trade union organizations denounce the standstill of the Roundtable on Matters relating to International Labour Standards and the non-compliance with collective agreements in certain enterprises owing to the COVID-19 pandemic. ***The Committee requests the Government to provide its comments in this respect.***

The Committee also takes note of the supplementary report provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020), which does not add new elements to the matters pending within the framework of the application of the present Convention. The Committee therefore repeats the content of its observation adopted in 2019, which read as follows.

The Committee notes the observations of the CNUS, the CASC and the CNTD, dated 31 August 2018 and 3 September 2019, which refer, firstly, to issues addressed in this observation and, secondly, to allegations of repeated acts of anti-union discrimination during the negotiation process of a collective agreement and the lack of material resources of labour inspectors. ***Noting the repeated nature of the allegations of anti-union discrimination, the Committee requests the Government to provide its comments in this respect.***

The Committee notes the replies of the Government to the observations of the CNUS, the CASC and the CNTD of 2016. The Committee notes that some of these issues were examined by the Committee on Freedom of Association in Cases Nos 2786 and 3297. The Committee also notes the Government's replies regarding the allegations of the obstruction of collective bargaining in two enterprises.

With respect to the establishment of the Roundtable on Matters relating to International Labour Standards, the Government reports that the Roundtable has been operating regularly since June 2018, with the objective of gaining a knowledge of the cases and finding a solution to which all parties agree. The Committee also notes the observations of the CNUS, the CASC and the CNTD of 2018 alleging that the Roundtable is ineffective. ***The Committee refers to its observation under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and trusts that the matters addressed in the present observation will be taken into account in the discussions that take place at the Roundtable.***

### (a) Application of the Convention in the private sector

*Articles 1 and 2 of the Convention. Effective and rapid application of dissuasive penalties against acts of anti-union discrimination and interference.* In its previous observations, the Committee noted the establishment of the Commission for Reviewing and Updating the Labour Code and the procedural difficulties faced by the magistrates' courts in the application of the penalties envisaged in sections 720 and 721 of the Labour Code, and requested the Government to adopt procedural and substantive reforms to enable the effective and rapid application of penalties and to provide statistics concerning the length of judicial proceedings. The Government indicates, in relation to the length of judicial proceedings, that on average: (i) in the first instance a case is heard within six months; (ii) an appeal is heard within six further months; and (iii) in the event that the case is subject to a cassation appeal, the ruling is handed down within approximately one year. The Committee further notes the observations of the CNUS, the CASC and the CNTD in relation to the delays in the cases regarding anti-union discrimination, which may be before the courts for between six and seven years. While noting the absence of information from the Government on the procedural difficulties faced by the magistrates' courts in the application of sections 720 and 721 of the Labour Code, as well as the diverging opinions expressed by the Government and the trade union organizations in relation to the duration of judicial proceedings, the Committee recalls that the existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice (see the 2012 General Survey on the fundamental Conventions, paragraph 190). ***In light of the foregoing, the Committee once again expresses the firm hope that procedural and substantive reforms will be adopted in the near future to enable the effective and rapid application of penalties as a deterrent against acts of anti-union discrimination and interference. Furthermore, the Committee once again requests the Government to send detailed statistics concerning the length of judicial proceedings relating to anti-union acts and to provide information on the application of penalties in practice, and on the deterrent effect thereof (number of fines imposed and number of enterprises concerned), as well as on the number of union leaders reinstated under sections 389 to 394 of the Labour Code.***

*Article 4. Promotion of collective bargaining. Majorities required for collective bargaining.* For many years, the Committee has been referring to the need to amend sections 109 and 110 of the Labour Code, which stipulate that, in order to engage in collective bargaining, a trade union must represent an absolute majority of the workers in an enterprise or a branch of activity. In this respect, the Government indicates once again that the Commission for Reviewing and Updating the Labour Code is in the process of reviewing the Labour Code and the content of sections 109 and 110 will be discussed in the context of these tripartite consultations. ***Noting that several years have passed since the review process of the Labour Code began, the Committee firmly hopes that this process will give rise in the near future to the amendment of sections 109 and 110, in accordance with the Committee's previous observations. The Committee requests the Government to report any developments in this respect.***

### (b) Application of the Convention in the public service

*Articles 1, 2 and 6. Protection of public servants not engaged in the administration of the State against acts of anti-union discrimination and interference.* In its previous comments, the Committee, noting that Act No. 41-08 on the public service only covers a union's founders and a number of its leaders, requested the Government to take the necessary steps to ensure that public servants not engaged in the administration of the State fully enjoy specific protection against acts of interference from their employer, providing for sufficient dissuasive penalties against acts of discrimination and interference. ***The Committee notes with regret the absence of specific information from the Government in this respect and firmly hopes that the Government will take the necessary measures to ensure that public servants not engaged in the administration of the State enjoy adequate protection against acts of discrimination and interference.***

*Articles 4 and 6. Right to collective bargaining of public servants not engaged in the administration of the State.* In its previous comments, the Committee noted that there was no reference to the right to collective bargaining in Act No. 41-08 on the public service or its implementing regulations and requested the Government to take the necessary measures without delay to secure recognition in law of the right to collective bargaining of public servants who are not engaged in the administration of the State. The Committee notes the Government's indication that joint meetings have been planned with officials from the Ministry of Public Service in order to examine the possibility of recognizing in law the right to collective bargaining of public servants who are not engaged in the administration of the State. ***The Committee firmly hopes that the Government will take the necessary measures to secure recognition in law of the right to collective bargaining of public servants who are not engaged in the administration of the State and requests the Government to provide information on any developments in this respect.***

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

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

# Ecuador

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

The Committee notes the Government's response to the observations of Public Services International in Ecuador (PSI-Ecuador) of August 2019.

The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 16 September 2020, as well as the Government's reply thereon.

The Committee further notes the observations of PSI-Ecuador received on 25 September 2020, as well as the joint observations submitted by the Trade Union Association of Agricultural, Banana and Peasant Workers (ASTAC) and the Ecuadorian Confederation of Unitary Class Organizations of Workers (CEDOCUT), received on 1 October 2020. The Committee notes that these observations apply in large part to the issues examined in the present comment.

### Technical assistance

In its last comment, the Committee welcomed the Government's request to the ILO for technical assistance regarding the process of legislative reform, with a view to addressing the observations and recommendations of the ILO supervisory bodies. For that reason, the Committee's comment was restricted to a brief summary of the issues that remained to be resolved, having expressed trust that the technical assistance provided would enable the Government to take the necessary measures regarding those issues. The Committee takes note of the report of the technical assistance mission carried out in Ecuador from 16 to 20 December 2019. In that regard, it notes that the Mission: (i) presented a roadmap to the tripartite constituents, which aimed at reflecting the principal subjects discussed in the meetings and which foresaw that the parties would engage in tripartite dialogue, starting in March 2020, with the technical assistance of the ILO. The dialogue would seek to adopt concrete measures to address the comments of the ILO supervisory bodies, and (ii) encouraged the tripartite constituents to finalize the roadmap as fast as possible and invited them to continue the dialogue with a view to finding tangible and sustainable results. The Committee ***regrets*** to observe that the Government's report makes no reference either to the technical assistance mission or to the roadmap. In that connection, it notes the allegations of PSI-Ecuador that the Government has failed to fulfil its commitment to the Mission to convene a further tripartite meeting in January 2020 to sign the roadmap.

The Committee recalls below the points it highlighted in its previous comments, which call for the implementation of concrete measures to bring the legislation into full conformity with the Convention.

### Application of the Convention in the public sector

*Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. Organizations of public servants other than the committees of public servants.* The Committee observed that the Basic Reform Act, reforming the legislation governing the public sector (Basic Reform Act), adopted on 19 May 2017, established the concept of the "committee of public servants" with the purpose of guaranteeing certain prerogatives to the most representative organization of public servants in every public institution (comprising 50 per cent plus one of the staff). The Committee noted that even though section 11 of the Basic Reform Act does not prohibit the possibility of establishing several trade unions at the same public institution, it does envisage and regulate the exercise of various collective rights of public servants only by the committee of public servants, since there can only be one such body in a public institution in view of its obligation to comprise "50 per cent plus one" of the staff. Recalling that under *Article 2* of the Convention, trade union pluralism must be possible in all cases, the Committee requested the Government to provide information on the manner in which organizations of public servants other than committees of public servants are able to represent and defend the interests of their members. In that connection, the Committee notes the Government's indication that the Basic Reform Act recognises the right of public servants to organize for the defence of their rights, to improve the provision of public services, and to exercise the right to strike. The Committee observes however, that (i) the second transitional provision of the Basic Reform Act establishes that the Ministry of Labour issues the Ministerial Decisions required to implement the provisions of the Act; (ii) on 5 February 2018, the Ministry issued Ministerial Decision MDT-2018-0010 regulating the right to organize of public servants; (iii) section 21 of that Ministerial Decision provides that committees of public servants are responsible for defending the rights of public servants, for improving provision of public services and for the exercise of the right to strike; and (iv) section 24 of the Ministerial Decision indicates that a strike may only be declared by the committees of public servants of public institutions. The Committee once again recalls that under *Article 2* of the Convention trade union pluralism must be possible in all cases. It also recalls that the most representativity should not result in the trade union that obtains such status being granted privileges which go beyond priority in representation for the purposes of collective bargaining, consultation by the authorities or the appointment of delegates to international bodies. ***The Committee therefore again requests the Government to indicate the means available to the organizations of public servants, other***

***than the committees of public servants, within the framework of the Basic Reform Act and the Ministerial Decision, of defending the occupational interests of their members, of organizing their administration and activities, and of formulating their programmes, in conformity with the Convention.***

*Articles 2, 3 and 4. Registration of associations of public servants and their officers. Prohibition of the administrative dissolution of such associations.* The Committee asked the Government to take the measures necessary so that the rules of Decree No. 193, which retains engagement in party-political activities as grounds for administrative dissolution, do not apply to associations of public servants whose purpose is to defend the economic and social interests of their members. In that connection, the Committee notes the Government's indication that, in compliance with section 226 of the Constitution, the institutions, agencies, departments and men and women public servants of the State, as well as those persons acting on behalf of a State authority, exercise only the powers and prerogatives conferred on them by the Constitution and the law. ***Recalling once more that the defence of the interests of their members requires associations of public servants to be able to express their views on the Government's economic and social policy, and that Article 4 of the Convention prohibits the administrative suspension or dissolution thereof, the Committee again requests the Government to take the necessary steps to ensure that the rules referred to in Decree No. 193 do not apply to associations of public servants whose purpose is to defend the economic and social interests of their members.***

*Administrative dissolution of the National Federation of Education Workers (UNE).* In its previous comments, following up the conclusions of the International Labour Conference Committee on the Application of Standards of June 2017, the Committee expressed its deep concern at the administrative dissolution of the UNE and urged the Government to take all necessary steps as a matter of urgency to revoke that decision so that the UNE could immediately resume its activities. In its last comment, the Committee expressed that it was encouraged by the initiation of dialogue between the Government and the UNE as well as by the repeal of Decree No. 16, which constituted one of the legal bases for the dissolution of the UNE. The Committee noted that the repeal of this decree allowed for the revocation of the dissolution of several social organizations and expressed the expectation that the Government would soon be in a position to report the revocation of the dissolution of the UNE so that this organization could immediately resume its activities to defend the occupational interests of its members. The Committee notes that the Committee on Freedom of Association refers to this issue when examining Case No. 3279 and, on that occasion, trusted that the necessary measures would be taken to ensure that the UNE could register as a trade union with the Ministry of Labour, if the organization so requested. The Committee further urged the Government to take all necessary measures to ensure the full return of the property seized from the organization as well as the elimination of any other consequences resulting from the administrative dissolution of the UNE (see 391st Report, October 2019, Case No. 3279). The Committee notes the Government's indication in its report that: (i) the dissolution and liquidation of UNE complied with due process; (ii) all legal actions filed by UNE against the administrative dissolution were overturned by the competent courts; and (iii) during the June 2019 to June 2020 period, five social organizations related to the UNE had been constituted, including the National Union of Education Workers – National Federation of Educational Personnel (UNTE-UNE), and registered in July 2020. ***While duly noting the registration of the UNTE-UNE, an organization of social nature related to the UNE, the Committee requests the Government to take the steps necessary to ensure the registration of the UNE as a trade union organization with the Ministry of Labour, if the organization so requests. It also asks the Government to ensure the full return of the property seized from the organization as well as the elimination of any other consequences resulting from the administrative dissolution of the UNE, and to inform of all developments in that regard.***

## Application of the Convention in the private sector

*Article 2 of the Convention. Excessive number of workers (30) required for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees.* The Committee asked the Government, in consultation with the social partners, to take the necessary steps to revise sections 443, 449, 452 and 459 of the Labour Code in such a way as to reduce the minimum number of members required to establish workers' associations and enterprise committees and also to enable the establishment of primary-level unions comprising workers from several enterprises. In that regard, the Committee notes the Government's indication that the purpose of fixing a minimum number of workers and of limiting associations to the level of an enterprise for the establishment of a trade union is not intended to discourage or restrict the creation of that type of organization, but to seek to ensure the representativeness, cohesion and agreement of the trade union organization in its relations with the employers. The Committee further observes that the Committee on Freedom of Association dealt with this issue in its most recent examination of Case No. 3148 (see 391st Report, October 2019), and on that occasion, the Government reported that: (i) on 13 March 2018 a proposal was made to reform Ministerial Decision No. 0130 of 2013 (article 2(2) of which sets the minimum number of members to form a trade union at 30), replacing the number 30 with an indication that the minimum membership would be established by the Labour Code; and (ii) the National Labour and Wage Board, a tripartite body, would

have the responsibility for defining the minimum number of members and the criteria for defining it. ***The Committee requests the Government to provide information in that regard and urges the Government, in consultation with the social partners, to take the necessary steps to amend sections 443, 449, 452 and 459 of the Labour Code in such a way as to reduce the minimum number of members required to establish workers' associations and enterprise committees and also to enable the establishment of primary-level unions comprising workers from several enterprises.***

*Article 3. Compulsory time limits for convening trade union elections.* The Committee asked the Government to amend section 10(c) of Ministerial Decision No. 0130 of 2013, regulating labour organizations, which provides that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiry of their mandate, as set out in their respective union constitutions, so as to ensure that, subject to the observance of democratic rules, the consequences of any delay in holding elections shall be determined by the union constitutions themselves. The Committee notes the Government's indication that several labour organizations and trade union federations took part in the approval of the Labour Organization Regulations, with the aim of solving the problem faced by workers' organizations when the absence of leadership makes it impossible to convene new elections, and establishing an agile, simplified mechanism, based on the principles of participation, transparency and democracy. The Committee recalls that, under *Article 3* of the Convention, trade union elections are an internal matter for the organizations and should be regulated primarily by their constitutions. ***The Committee therefore requests the Government to amend article 10 of the Labour Organization Regulations No. 0130 of 2013 to provide that, in compliance with any democratic rules, the consequences of any delay in convening trade union elections are set out in the constitutions of the organizations themselves.***

*Article 3. Requirement of Ecuadorian nationality to be eligible for trade union office.* The Committee recalls that in its 2015 observation it noted with satisfaction that section 49 of the Labour Justice Act had amended section 459(4) of the Labour Code and removed the requirement of Ecuadorian nationality to be eligible for trade union office. The Committee observes, nevertheless, that according to the comments of ASTAC and CEDOCUT section 49 of the Labour Justice Act has been declared unconstitutional under decision 002-18-SIN-CC of 21 March 2018. The Committee recalls that the national legislation must allow foreign workers to serve as trade union officials, at least after a reasonable period of residence in the host country. ***The Committee requests the Government to explain the consequences of the above decision of the Constitutional Court on the right of foreign workers to serve as trade union officials.***

*Elections as officers of enterprise committees of workers who are not trade union members.* The Committee notes that, in the public administration, the Basic Reform Act provides that only members of the committee of public servants may become enterprise committee officers. ***In that regard, the Committee again expects that the Government will take the necessary steps to amend section 459(3) of the Labour Code in such a way that workers who are not enterprise committee members may stand for office only if the enterprise committee's own statute envisages that possibility.***

*Article 3 of the Convention. Right of workers' organizations and associations of public servants to organize their activities and to formulate their programmes. Prison sentences for the stoppage or obstruction of public services.* The Committee asked the Government to take the measures required to amend article 346 of the Basic Comprehensive Penal Code (COIP), which provides for imprisonment of one to three years for obstructing or stopping the normal provision of a public service, so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike. In that regard, the Committee notes from the Government's report that the request to amend the COIP is to come before the relevant State institutions, for consideration as to whether to proceed with the amendment. ***The Committee requests the Government to inform in this connection.***

The Committee notes with ***regret*** that, having made available the technical assistance requested, there has been no discernible progress to the present date in respect of measures necessary to bring the legislation into conformity with the Convention. The Committee most particularly ***regrets*** that it has received no information from the Government relating to the follow-up given to the Office's December 2019 mission. ***The Committee urges the Government to intensify its efforts to adopt the necessary measures regarding the points raised in the Committee's comments. In that regard, noting the Government's indication that the Ministry of Labour envisaged holding round-table dialogues with certain employers' and workers' organizations at the end of 2020, the Committee urges the Government to facilitate constructive dialogue with all representative employers' and workers' organizations with a view to obtaining tangible and sustainable results. The Committee requests the Government to inform in that regard.***

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

***[The Government is asked to reply in full to the present comments in 2021.]***

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

The Committee notes the Government's response to the observations of Public Services International in Ecuador (PSI-Ecuador) of August 2019.

The Committee also notes the observations of the Trade Union Association of Agricultural, Banana and Peasant Workers (ASTAC), received on 24 January 2020, and the observations of PSI-Ecuador, received on 25 September 2020, and the joint observations of ASTAC and the Ecuadorean Confederation of Unitary Class Organizations of Workers (CEDOCUT), received on 1 October 2020. The Committee notes that these observations refer to, in addition to the issues examined in the context of the present comment, allegations of anti-union dismissals and a number of administrative and legislative measures adopted by the Government during the pandemic that were not subject to tripartite consultation, such as the Basic Act on humanitarian support to combat the COVID-19 health crisis, of 22 June 2020, which the organizations claim introduced regressive reforms to the Labour Code with regard to the rights of public sector workers in addition to new violations of collective bargaining rights. ***The Committee requests the Government to send its comments in this regard.***

*Technical assistance.* In its previous comment, the Committee welcomed the Government's request for technical assistance from the ILO in relation to the legislative reform process and with a view to following up on the observations and recommendations made by the ILO supervisory bodies. For this reason, the Committee's observation was limited to a brief summary of the issues to be addressed, having expressed trust that the technical assistance would enable the Government to adopt the necessary measures in this regard. The Committee notes the report of the technical assistance mission carried out in Ecuador from 16–20 December 2019. In this regard, it notes that: (i) the mission submitted to the tripartite constituents a draft roadmap to address the priority issues discussed in the meetings, which provided that the constituents would in March 2020, with ILO technical assistance, commence tripartite dialogue with a view to adopting specific measures to address the comments of the ILO supervisory bodies; and (ii) the mission encouraged the tripartite constituents to finalize the roadmap as soon as possible and invited them to continue the dialogue with the aim of achieving tangible and sustainable outcomes. The Committee ***regrets*** to observe that the Government's report omits all reference to the technical assistance mission and the draft roadmap. The Committee notes in this regard the allegations of PSI-Ecuador that the Government failed to act on its commitment to the mission to hold a new tripartite meeting in January 2020 to sign the roadmap.

The Committee recalls below the points it has emphasized in its previous comments and which require the adoption of specific measures to bring the legislation into full conformity with the Convention.

### Application of the Convention in the public sector

*Articles 1, 2 and 6 of the Convention. Protection of public sector workers who are not engaged in the administration of the State against acts of anti-union discrimination and interference.* In its previous comments, the Committee noted the protections against anti-union discrimination and interference set out in the Basic Act reforming the legislation regulating the public service (Basic Reform Act). It also observed that Ministerial Order No. MDT-2018-0010, which regulates the exercise of the right to organize of public servants, seemed to be limited to acts of interference. Recalling the importance of effective and dissuasive penalties in this regard, the Committee requested the Government to provide information on: (i) the penalties and compensation applicable to acts of anti-union discrimination and interference committed in the public sector; (ii) whether, in addition to the leadership of the Civil Service Committee, the leaders of organizations of public servants also benefit from additional protection against the elimination of positions or benefit from other similar measures, including in the event of recourse to the "purchase of compulsory redundancy" mechanism; and (iii) the outcome of a legal action to have the above mechanism declared unconstitutional that, according to PSI–Ecuador and the National Federation of Education Workers (UNE), had been submitted. In this regard, the Committee notes the Government's indication that: (i) the second general provision of the Basic Reform Act specifies that in the event of dismissal due to retrenchment and the purchase of compulsory resignation with compensation or unfair dismissal of members of the Civil Service Committee, the provisions of the Labour Code that regulate "dismissal without effect" as provided for in section 195.2 of the Labour Code are applicable; (ii) sections 187 and 195(1) and (2) of the Labour Code provide that the unfair dismissal of trade union leaders is considered to be without effect; and (iii) section 195.3 of the Labour Code provides that, when dismissal is declared to be without effect, the employment relationship is considered not to have been interrupted and outstanding wages are ordered to be paid with a 10 per cent supplement; and if the worker decides not to continue the employment relationship, he or she shall receive compensation equivalent in value to the yearly wage the worker had been receiving, in addition to compensation for unfair dismissal. The Committee observes, however, that it is not clear from the above whether there are any provisions applicable to the public sector that explicitly protect leaders of organizations of public servants who are not part of the leadership of the Civil Service Committee. ***In this context, the Committee requests the***

***Government to adopt the measures necessary to ensure that the legislation applicable to the public sector contains provisions that explicitly protect the leaders of all organizations of public servants against acts of anti-union discrimination and interference and that set forth dissuasive penalties for these acts. In addition, the Committee once again requests the Government to provide information on the outcome of the legal action that, according to PSI-Ecuador and the UNE, had been brought to have the "purchase of compulsory resignation" mechanism declared unconstitutional.***

*Articles 4 and 6. Collective bargaining for public sector workers who are not engaged in the administration of the State.* In its previous comments, the Committee observed that the Basic Reform Act and Ministerial Order No. MDT-2018-0010 do not recognize the right to collective bargaining for public servants and that only public sector workers, who are regulated by the Labour Code, may engage in collective bargaining. The Committee also noted that the constitutional amendments of 2015, which excluded the entire public sector from the scope of collective bargaining, had been nullified by the Constitutional Court (ruling No. 018-18-SIN-CC of 1 August 2018). The Committee previously urged the Government to reopen an in-depth discussion with the trade unions concerned with a view to establishing an adequate collective bargaining mechanism for all categories of public employees covered by the Convention. In this regard, the Committee notes the Government's indication that although dialogue has been maintained with public sector trade unions, the lack of cohesion between the representative trade unions and their divergent criteria and interests has made discussions difficult. The Committee also notes that, according to allegations made by the ASTAC and CEDOCUT in their observations, despite the fact that on 4 December 2019 the Ministry of Labour issued Ministerial Order No. 373 giving effect to Constitutional Court ruling No. 018-18-SIN-CC of 2018, a high percentage of public sector institutions have not complied with the Order. They also allege that even individuals who entered employment after the amendments were declared unconstitutional remain in a legal limbo, being considered neither public employees nor public sector workers, and that as a result they are not allowed to be members of existing trade unions or engage in collective bargaining. The Committee once again recalls that under the terms of *Articles 4* and *6* of the Convention, all workers in the public sector who are not engaged in the administration of the State (such as employees in public enterprises, municipal service employees and those in decentralized institutions, teachers in the public sector and personnel in the transport sector) are covered by the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 172) and should therefore be permitted to collectively bargain their conditions of employment, including wage conditions, and that mere consultation of the unions concerned is not sufficient to meet the requirements of the Convention in this respect (see the 2012 General Survey on the fundamental Conventions, paragraph 219). ***The Committee once again urges the Government to intensify its efforts to reopen an in-depth debate with the trade unions concerned with a view to establishing an adequate collective bargaining mechanism for all categories of workers in the public sector covered by the Convention. It also requests the Government to adopt the necessary measures to ensure the full implementation of Ministerial Order No. 373 in the various State institutions and to provide information in this regard.***

## Application of the Convention in the private sector

*Article 1. Adequate protection against acts of anti-union discrimination.* The Committee once again recalls that it has been commenting for many years on the need to include provisions in the legislation guaranteeing protection against acts of anti-union discrimination in access to employment. In this regard, the Committee notes the Government's indication that it has no current plans to adopt specific legislation on this issue, since the labour legislation in force provides adequate guarantees and protection for workers to exercise their right and freedom to organize when they deem it necessary. ***In this regard, the Committee emphasizes the need to include the above-mentioned provisions in the legislation and requests the Government to provide information in its next report on any measures adopted in this respect.***

*Article 4. Promotion of collective bargaining.* The Committee previously observed that, in accordance with section 221 of the Labour Code, collective labour agreements must be concluded with the works council, or, if one does not exist, with the organization with the largest number of worker members, provided that it represents over 50 per cent of the enterprise's workers. The Committee previously requested the Government, in consultation with the social partners, to adopt the necessary measures to amend section 221 so that if there is no organization that represents more than 50 per cent of the workers, minority trade unions can, either separately or jointly, negotiate at least on behalf of their own members. In this respect, the Committee notes the Government's repeated indication that it does not plan to amend section 221 of the Labour Code, since its provisions are strictly aligned with the principles of democracy, participation and transparency insofar as the benefits obtained in the collective agreement apply to all workers in the employing enterprise or institution. The Committee is bound to once again recall in this regard that, while it is acceptable for the union which represents the majority or a high percentage of workers in a bargaining unit to enjoy preferential or exclusive bargaining rights, the Committee considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority

trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members (see the 2012 General Study, paragraph 226). ***The Committee therefore urges the Government, in consultation with the social partners, to finally adopt the necessary measures to amend section 221 of the Labour Code so that, where there is no organization that represents over 50 per cent of the workers, minority trade unions can, either separately or jointly, negotiate at least on behalf of their own members. The Committee also once again requests the Government to provide information on the number of collective agreements signed and in force in the country, and on the sectors and the number of workers covered by these agreements.***

*Ministerial Orders establishing new forms of contract for banana plantation workers and agricultural workers.* The Committee previously requested the Government to provide its comments regarding the allegations made by the ASTAC that Ministerial Orders Nos. MDT-029-2017, MDT-074-2018 and MDT-096-2018, which establish new forms of contract for banana plantation workers and agricultural workers, would obstruct the effective exercise of the right to collective bargaining in those sectors. In this regard, the Committee notes the Government's indication that: (i) the forms of contract issued by the Ministry of Labour are not intended for a specific group of people and do not specifically cover certain jobs; and (ii) the form of contract is for temporary jobs, which are common in all economic activities and particularly in the banana sector, but that it was precisely this fact that had allowed contractual relationships in the banana sector to be regularized and enabled workers to benefit from all their labour rights. The Committee also notes that, according to the Government's indications, during the June 2019–June 2020 period, a total of four collective agreements were signed and in force in the agricultural sector and three in the banana sector. ***The Committee notes this information and requests the Government, in the context of the statistics requested in the preceding paragraph, to continue providing detailed information on the existing collective agreements in the above-mentioned sectors, and on the number of workers covered.***

The Committee ***regrets*** to observe that, although it has made available the requested technical assistance, it has not to date observed any progress in the adoption of the necessary measures to bring the legislation into line with the Convention. The Committee particularly ***regrets*** that it has not received information from the Government on the follow-up to the ILO mission of December 2019. ***The Committee urges the Government to intensify its efforts to adopt the necessary measures in relation to the points emphasized in its comments and, to this end, to hold a constructive dialogue with all representative employers' and workers' organizations with the aim of achieving tangible and sustainable results. The Committee requests the Government to provide information on any progress made in this respect.***

***[The Government is asked to reply in full to the present comments in 2021.]***



## Egypt

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

The Committee takes note of the observations made by the International Trade Union Confederation (ITUC) received on 25 September and 13 October 2020, in relation to the application of the Convention in law and in practice. It further notes the observations made by Public Services International (PSI) on behalf of its affiliates the Real Estate Taxes Authority Union (RETA), the Bibliotheca Alexandrina Staff Union (BASU) and the Egyptian Ambulance Organization Employees Syndicate, as well as its partner organization, the Center for Trade Union Workers' Services (CUTWS), received on 22 October 2020.

#### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

In its previous comments, the Committee recalled the conclusions of the Conference Committee on the Application of Standards in June 2019 concerning the application of the Convention. In particular, the Committee observed that the Conference Committee called upon the Government to: (i) ensure that there are no obstacles to the registration of trade unions, in law and practice, in conformity with the Convention; (ii) act expeditiously to process pending applications for trade union registration; (iii) ensure that all trade unions are able to exercise their activities and elect their officers in full freedom, in law and in practice, in accordance with the Convention. It further called upon the Government (iv) to amend the Trade Union Law to ensure that: the level of minimum membership required at the enterprise level, as well as for those forming general unions and confederations, did not impede the right of workers to form and join free and independent trade union organizations of their own choosing; and that workers were not penalized with imprisonment for exercising their rights under the Convention; and (v) to transmit copies of the draft Labour Code to the Committee of Experts before its session in November 2019. Finally, the Conference Committee invited the Government to accept ILO technical assistance to assist in implementing these recommendations.

*Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing. Application in law and in practice.* The Committee recalls from its previous comments the Government's

indication that the Minister of Manpower created a legal and technical committee reporting directly to him mandated with examining all problems facing union organizations that had failed to regularize and then to offer the required technical support. The ministerial committee had examined the submissions and informed the organizations of some legal and procedural restrictions on 27 August 2019. The Government added that 11 new union committees (only ten different names were provided by the Government) were created during the months of July and August and one new general union was formed bringing the number of such unions established according to the 2011 Ministerial Declaration on Freedom of Association to five general unions, including two that were not members of a higher union federation. The Committee had noted the subsequent indication by the Government that the ministerial committee had further reviewed registration papers submitted by the following 11 new trade union committees and was finalizing the procedures so that they could receive certificates of legal personality: (Trade Union Committees of Workers in Real Estate Tax in Kafr Al Sheikh, Giza and Beni Sewaif; Trade Union Committee of Workers in the Water and Sanitation Company in Qena; Trade Union Committee of Sanitation Workers in Gharbeya; Trade Union Committee of Representatives of associations and private institutions; Trade Union Committee of Workers in Hunting in Giza; Trade Union Committee of Workers in Transportation and Transport in Giza; Trade Union Committee of Workers in Cement in Suez; Trade Union Committee for Workers in Transportation and Transport in Damietta; Trade Union Committee for Workers in Telecommunications in Qena).

The Committee notes the information provided by the ITUC that since the dissolution of all independent unions in 2018, workers and their representatives have sought the re-registration of their unions but still face an arduous and arbitrary process and in practice the authorities still impose excessive and absurd registration requirements, such as obtaining the employer's approval and stamp. As regards the eleven trade union committees in particular for which the Government had indicated the procedures for recognition were being finalised, the ITUC and the PSI indicate that three of the eleven - the Trade Union Committees of Workers in Real Estate Tax in Kafr Al Sheikh and Giza, the Trade Union Committee of Workers in the Water and Sanitation Company in Qena and the Trade Union Committee of Sanitation Workers in Gharbeya - were still awaiting registration. They further refer to the Trade Union Committee of Quality Assurance in Giza, which has been awaiting registration for over a year. They add that no tangible progress has been made by the technical committee mandated to review the obstacles to trade union registration and that, since March, no meeting has been organized, even virtually. The ITUC and the PSI submit a list of 19 trade union organizations that have yet to be registered, despite their complying with the administrative requirements, and another ten organizations that had adjusted their legal status based on the new administrative requirements yet continued to be refused the necessary papers for their operation.

The Committee takes due note of the Government's reply that the Ministry already meets with the trade union organizations seeking to be constituted and helps them to resolve all of their problems and guarantees them all of their entitlements pursuant to the applicable law. According to the Government, the Ministry has succeeded in surmounting many of the obstacles facing them, although the events that have affected the world, including Egypt, as a result of the repercussions of the coronavirus crisis have prevented this from being completed at the speed hoped for. On the one hand, workers in the Ministry and in the municipalities were granted exceptional leave and on the other hand, representatives of the trade union organizations were obliged to isolate at home for periods of time as a precautionary measure and informed the Ministry officially thereof. More generally, the Government indicates that the time taken for the completion of the registration process varies with the extent of awareness of the organization, which submits the legally required documents. In the case of completion of documents, the legal representative shall be given the minutes of submission within approximately two days. In the case of incompletion of documents, the organization submitting the documents shall be informed of the required documents to be submitted, and the manner of getting them. In the case that the documents submitted are found to be incorrect or insufficient, the competent administrative body shall have the right, within thirty days as of the date on which the documents were deposited, to notify the legal representative of the organization thereof by means of a recommended letter. If a trade union organization does not rectify its documents or procedures, which are the subject of notification, or complete the documents or procedures within thirty days as of the date on which the notification was received, the competent administrative body shall have the right to object to the establishment of the trade union organization before the competent labour tribunal. Numerous trade union organizations, which exercised their activity in accordance with the Ministerial Declaration of 2011, succeeded in regulating their status or in submitting the incorporation documents, and became integrated under a legal umbrella, which regulates their status on an equal basis with organizations established under the previous law. The Government adds that it has received approximately 67 incorporation applications to date. It reaffirms its belief that full compliance with international labour standards especially freedom of association and collective bargaining is one of the most important pillars for the stability of industrial relations, its regularity, and its positive impact on production and economic growth. The Government adds that there are numerous challenges and difficulties encountering the three social partners, especially since the new trade union

movement in Egypt is a nascent trade union movement that should be fostered and provided with all relevant support. The Government emphasizes that the technical assistance project to be implemented on "Strengthening labour relations and its institutions in Egypt" provides a real opportunity to raise awareness on freedom of association and the role of the social partners in observing international labour standards and in overcoming any difficulties. The Ministry has set up a standing committee to examine complaints submitted by trade union organizations and to provide them with the necessary technical assistance by virtue of Ministerial Decision No. 162 of 2020, published in the Egyptian Official Gazette in order to ensure its sustainability. During the month of November, the standing committee held four sessions and examined twenty-six cases. To date, ten union committees were given certificates of legal personality. Other trade union committees were completing their papers.

The Government further indicates that it has reached out to the three trade union committees in the above list that had not yet finalised their registration. According to the Government, two had not replied to its invitation while one indicated that it was finalising its papers. The Government has also reached out or will reach out to the 19 trade union committees mentioned in the most recent communication from the workers' organizations, four of which have already received their certificate of registration. As regards the ten trade union committees that had completed the registration process but not received the necessary papers for their operation, the Government indicates that four of them now have their certificates of registration, two have taken the matter to the courts (one has won the appeal while the other is in the process), three will be invited to the Ministry to resolve any outstanding issues and one has simply not set up its executive board.

***While welcoming the steps taken by the Government to engage with unions requesting registration and to assist them in the completion of this process, the Committee expects that the Government will take all necessary measures to ensure the elimination of excessive registration requirements, such as obtaining the employer's approval and stamp, so that they may be registered without further delay. Given the numerous challenges to registration that continue to be raised, the Committee trusts that, on the basis of the 2019 amendments which had lowered the minimum membership requirement, the remaining organizations will receive their certificates of legal personality without delay so that they will be able to exercise their activities fully, in accordance with the Convention. The Committee requests the Government to continue to provide detailed information on the number of trade union registration applications received, the number of registrations granted, the reasons for any refusals to grant, as well as information on the average time taken from filing to registration.***

*Minimum membership requirements.* In its previous comments, the Committee noted with interest the adoption on 5 August 2019 of Law No. 142 lowering the minimum membership requirement to 50 workers for the formation of a trade union committee at enterprise level, to ten union committees and 15,000 members for a general union and to seven general unions and 150,000 members for the establishment of a trade union federation (that is, a confederation). The Committee notes the ITUC observation indicating that the thresholds are still too high and in a context of intimidation and continued repression of union activities, workers and their representatives may be severely hampered in their efforts to gather such high numbers, especially in small and medium-sized establishments and in small industries or sectors. While noting the Government's indication that the amendments were submitted to, and adopted by the Supreme Council for Social Dialogue, which deemed the numbers to be appropriate for the labour force in Egypt and proportionate to the number of establishments, the Committee once again recalls that the minimum membership requirement should be fixed in a reasonable manner so that the establishment of organizations is not hindered in respect of all levels of formation (see the 2012 General Survey on the fundamental Conventions, paragraph 89). ***The Committee once again requests the Government to continue to review these requirements with the social partners concerned so as to ensure that all workers are able to form and join the organizations of their own choosing and that their organizations can establish and join federations and confederations freely.***

*Article 3. Right of workers' organizations to organize their administration without interference and to enjoy the benefits of international affiliation.* In its previous comments, the Committee noted with interest that Law No. 142 amended sections 67, 68 and 76 so as to eliminate all references to imprisonment and establishing uniquely the payment of a fine. The Committee requested the Government to keep the application of these provisions under review and to inform of any penalties imposed, with specific reference to section 67. While noting the Government's indication that section 67 is restricted to acts of any entity which uses- without any right to do so- in its communications, posters or ads etc., the name of a trade union organization, or exercises a union activity which is restricted to the members of the boards of directors of the trade union organization, thus aimed at the protection of trade union organizations from other entities, the Committee notes with ***concern*** from the information provided by the ITUC and PSI that this section was precisely used against the President of the Trade Union Committee of workers in Education in the Qena Governorate who was fined for leading a non-registered trade union without possessing the necessary letters to operationalize the organization. The ITUC and PSI add that this trade union committee deposited its application in May 2018 and obtained a receipt from the Directorate of

Labour but did not succeed in getting a stamped procès-verbal. The Committee recalls in this respect that although the official recognition of an organization through its registration constitutes a relevant aspect of the right to organize, as it is the first measure to be taken so that organizations can fulfil their role effectively, the exercise of legitimate trade union activities should not be dependent upon registration (see the 2012 General Survey on the fundamental Conventions, paragraph 83). ***The Committee requests the Government to review this case in light of its own explanation as to the aim of section 67 and indicate the measures taken or envisaged to ensure that these broadly worded sections are not used to penalise trade unions for carrying out their activities even if the final stages of the registration process have yet to be completed. It further requests the Government to inform it of any further penalties imposed under these provisions and the reasons for such penalties.***

The Committee had also observed that the Trade Union Law set out certain specific conditions for trade union office (section 41.1 and 41.4) which it considered interfered with the right of workers' organizations to elect their representatives in full freedom, in particular the requirement to read and write and matters related to military service. The Committee notes the Government's indication that representatives of trade union organizations had agreed on the importance of these conditions for those who nominate themselves to the administrative and financial management of the organization since the board of directors is the executive authority. With respect to military service, the Government indicates that the provision does not specify the condition of having completed the military service, but it sets down the requirement of indicating the status vis-à-vis the military service. According to the Government, the reason for this is that if the candidate is doing his military service, this will conflict with his carrying out his trade union duties. While the ITUC alleges that the military service requirement specifically implies that migrant workers cannot stand for office, the Committee takes due note of the Government's observation that section 41(1) calls for a candidate to trade union office to have performed or have been legally exempt from military service, the latter of which would be the case for migrant workers who would therefore not be subject to this condition. The Committee nevertheless considers that such stipulations should be the prerogative of trade union by-laws rather than being set by the legislation concerning trade unions. ***The Committee once again requests the Government to review these requirements with the social partners concerned with a view to bringing them into conformity with the Convention.***

*Further comments by the ITUC.* The Committee further notes that the ITUC objects to a number of other provisions of Law No. 213 of 2017. In particular, the ITUC considers that section 5 of Law, which provides that a trade union may not be founded on a religious, ideological, political, partisan or ethnic basis runs counter to *Article 2* of the Convention. The Committee notes the Government's indication that the purpose of this provision is precisely to protect workers from discrimination and to ensure that they are not deprived of trade union membership on these grounds. In this regard, the Committee recalls that it has previously noted that the right of organizations to draw up their constitutions and rules must be subject to the need to respect fundamental human rights and that this means that it would not be inconsistent with the requirements of the Convention to require that union rules not discriminate against members or potential members on grounds of race, colour, sex, religion, political opinion, national extraction or social origin.

The ITUC further refers to detailed provisions in sections 30 and 35, which set out the competencies of executive committees and election procedure for general assemblies and section 42, which imposes detailed rules on the membership of executive committees and circumscribing their functions. The Committee notes the Government's indication that these sections are purely regulatory to support and organize the work of the trade union movement. Finally, the Committee notes the ITUC's observations that section 58 makes the accounts of organizations subject to the control of a central accounting body amounting to interference in their administration while the Government indicates that this body audits free of charge in order to protect workers and provide support for the organizations. The Committee recalls that legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference which is incompatible with the Convention. Where such provisions are deemed necessary, they should simply establish an overall framework within which the greatest possible autonomy is left to the organizations for their functioning and administration. Moreover, as the autonomy and financial independence are essential elements of the right of organizations to organize their administration in full freedom, any legislative intervention in this respect merits the attention of the Committee. While it accepts legislative requirements that the constitutions of organizations should contain provisions relating to their internal financial administration or which provide for external supervision of financial reports, with a view to ensuring the conditions for honest and effective administration, it considers that other interventions are incompatible with the Convention. For example, the Committee considers that such supervision is compatible with the Convention when: the supervision is limited to the obligation of submitting annual financial reports; verification is carried out because there are serious grounds for believing that the actions of an organization are contrary to its rules or the law and is limited to cases in which a significant number of workers (for example, 10 per cent) call for an investigation of allegations of embezzlement or lodge a complaint. However, the Committee considers that such supervision is incompatible with the Convention if the law tends to over-regulate matters that

should be left to the trade unions themselves and their by-laws, including providing for financial supervision of the accounts by the public authorities (see the 2012 General Survey on the fundamental Conventions, paragraphs 108–110). Finally, the Committee observes that section 7 empowers in vague and broad terms the Minister to request the competent labour court to hand down a decision to dissolve the administrative board of a trade union organization if there is a violation of the law or a perpetration of gross financial or administrative violations. ***The Committee requests the Government to review these provisions and their application with the social partners concerned with a view to bringing them into conformity with the Convention.***

*Labour Code.* In its previous comments, the Committee noted the draft Labour Code transmitted by the Government and which was being debated in the Manpower Committee of the Parliament. It welcomed the Government's statement that all provisions of the draft Labour Code would continue to be reviewed and that the Committee's comments would be presented to the Parliament. In reply to the Committee's considerations in relation to the right to strike, the Committee notes the Government's reaffirmation that the right to strike is a constitutional right and that its provisions are formulated through consultation and dialogue with both workers' and employers' representatives. In respect of the Government's reiteration that the obligation to declare the duration of the strike does not specify a maximum period or periods of a strike action, which may be extended or renewed for similar periods, thus safeguarding the aim of a strike action as a legitimate means of pressure, the Committee recalls that workers and their organizations should be able to call a strike for an indefinite period if they so wish (see the 2012 General Survey on the fundamental Conventions, paragraph 146). As for the prohibition of strike action in strategic or vital establishments in which the suspension of work will result in a breach of national security, or in main or vital services, which are provided to citizens, the Government recalls that the identification of such facilities and the rules governing strike action will be issued by the Prime Minister. As regards the reference to a specific trade union organization in section 78 of the draft Labour Code, the Committee notes the Government's indication that this was an error and that the Manpower Committee has been contacted to rectify it. ***Recalling that restrictions on the right to strike should be limited to public servants exercising authority in the name of the State, essential services in the strict sense of the term and situations of acute national crisis, the Committee expresses the firm expectation that the Labour Code will be adopted without delay and that it, along with any implementing decrees, will be fully in line with the Convention. The Committee requests the Government to provide information on the progress made in this regard and to transmit a copy of the Labour Code as soon as it has been adopted, as well as relevant regulations that may have been issued thereunder.***

As regards the work on a Law regulating domestic work, the Committee notes the Government's indication that the new draft law is still under preparation and an initial societal dialogue was held on its first draft with the social partners, experts and specialists and numerous members of Parliament. The Government adds that the Trade Union Law applies to domestic workers who will have the right to form trade unions to defend their interests. ***Recalling that the draft Labour Code excludes domestic workers from its coverage, including the chapters relating to collective labour relations, the Committee once again requests the Government to provide a copy of the law regulating domestic work as soon as it is adopted, as well as a copy of the model employment contract. It further requests the Government to indicate the names of any trade unions of domestic workers that have been registered and the dates on which registration was approved.***

## Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1954)

The Committee takes note of the observations made by Public Services International (PSI) on behalf of its affiliates the Real Estate Taxes Authority Union (RETA), the Bibliotheca Alexandrina Staff Union (BASU) and the Egyptian Ambulance Organization Employees Syndicate, as well as its partner organisation, the Center for Trade Union Workers' Services (CUTWS), received on 22 October 2020, on matters concerning the application of the Convention in law and in practice. The Committee also takes note of the Government's comments to these observations.

The Committee updated its 2019 examination of the application of the Convention on the basis of the elements mentioned in the previous paragraph.

*Articles 1, 2 and 3 of the Convention. Adequate protection against anti-union discrimination and interference.* With reference to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee notes that Trade Union Law No. 137 prohibits generally in section 3 any discrimination for the formation of a trade union or the exercise of trade union activity. It further notes that the draft Labour Code currently before the Manpower Committee of Parliament prohibits under section 138 dismissal on the basis of trade union membership or activity. In the draft sent by the Government, however, any section on sanctions, penalties or remedies was missing. ***Recalling that Article 1 of the Convention calls for protection against anti-union discrimination not only in respect of dismissal but also as regards any act that would prejudice workers in their employment,***

***including at the time of hiring, and other forms of prejudice such as demotion, transfer, benefits, etc., and that Article 2 provides that workers' and employers' organisations shall be protected against acts of interference by each other, the Committee requests the Government to indicate the legislative provision which ensures full protection in respect of such acts and the sanctions, penalties and remedies provided for this purpose.***

The Committee further notes the concerns raised by the PSI and other organisations regarding a specific case of alleged anti-union discrimination. The Committee notes the Government's indication that the unionist in question was carrying out his trade union activity in accordance with the provisions of the Trade Union Organisations Law and that the labour administration provided him assistance in his appeal to the courts concerning the alleged acts.

*Article 4. Promotion of collective bargaining.* As regards the comments it has been making for several years on Labour Code No. 12 of 2003, the Committee notes the Government's indication that the draft has eliminated any references to the role of higher-level organisations in the negotiation process of lower-level organisations. It further notes the Government's explanation that the draft law provides for optional arbitration based on the will and desire of both parties without any coercion. ***The Committee requests the Government to provide information on any further developments in the draft Code and to supply a copy as soon as it has been adopted.***

*Articles 4 and 6. Collective bargaining for public servants not engaged in the administration of the State.* As regards the exclusion from the scope of application of the draft Labour Code, and thus of the right to collective bargaining, of civil servants of state agencies, including local government units, the Committee notes the Government's indication that Act No. 81 on the civil service was adopted on 1 November 2016 and Executive Regulations were issued by Decree from the Prime Minister No. 126/2017. The Committee notes that Act No. 81 establishes, on the one hand, a Civil Service Council which has an advisory role on various issues related to the Civil Service and, on the other hand, for each public department, human resources committees. The Committee also notes that, under section 3 of Act No. 81 and section 4 of its Executive Regulations, the Civil Service Council and the human resources committees, composed mainly of representatives of the administration, include a trade union representative whose appointment is mainly the responsibility of the Egyptian Trade Union Federation. At the same time, the Committee notes that the Act and its Executive Regulations make no mention of other ways of representing public service employees and of mechanisms enabling them to collectively negotiate their working and employment conditions.

In its response to the observation of the trade unions, the Government adds that there is nothing that prevents public servants from exercising collective labour rights (such as social dialogue, collective bargaining, the right to strike, etc.). Section 4 of the draft Labour Code specifies their exemption "unless another text provides otherwise" and in this respect it should be noted that they are covered by the provisions of the Trade Union Organizations Law, section 2 of which specifies that they have the right to all collective labour rights as well as the right to strike in sections 14, 15, and 16.

Observing that the Trade Union Organizations Law does not establish mechanisms and procedures for the engagement in collective bargaining, the Committee recalls that *Article 4* of the Convention provides that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

In this respect, the Committee recalls that civil servants not engaged in the administration of the State must be able to collectively negotiate their working and employment conditions beyond mere consultation mechanisms. ***The Committee therefore requests the Government to specify the mechanisms enabling the civil servants not engaged in the administration of the State to collectively negotiate their employment conditions, as well as the manner in which the organisations representing them are designated.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## El Salvador

### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2006)

The Committee notes the observations of the National Business Association (ANEP), supported by the International Organisation of Employers (IOE), received on 13 October 2020 (which also refer to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and which the Committee is addressing here with regard to the present Convention), which report that the President of the Republic and other higher Governmental bodies have failed to recognize, slandered and intimidated the new President of ANEP, who was elected on 29 April 2020, preventing dialogue between public servants and ANEP or its

President, thereby publicly denigrating the most representative employers' organization and fuelling rejection of its President by the public, in violation of the Convention and the most fundamental civil liberties. ***The Committee expresses its concern at these serious allegations and requests the Government to provide its comments on the matter.***

The Committee also notes that the Committee on Freedom of Association referred the legislative aspects of Case No. 3321 to this Committee, trusting that the Government would take the measures necessary to ensure full respect of the right to organize of prison staff (see 392nd Report, October 2020). ***Recalling its request that the necessary measures be taken in order to recognize the right to organize of State employees, with the sole possible exception of the armed forces and the police (see the legislative reforms pending below), the Committee requests the Government to keep it informed of any developments in this respect.***

As regards the other pending issues, the Committee reiterates the content of its comments adopted in 2019, reproduced as follows.

The Committee notes the Government's replies to the previous observations of ANEP and the IOE, as well as of the National Confederation of Salvadoran Workers (CNTS).

*Trade union rights and civil liberties. Murder of a trade unionist.* With regard to the murder of Mr Victoriano Abel Vega in 2010, the Committee notes that the Government emphasizes the need to accelerate the investigation and punish the perpetrators, and it details the steps it is taking periodically to request updated reports from the Attorney-General of the Republic, with the most solid line of investigation being that the murder was committed mistakenly by a group of gang members. The Committee notes that the details provided by the Government on the investigation process have already been examined by the Committee on Freedom of Association and that recent updates show that the case is still under investigation. The Committee therefore refers once again to the recommendations of the Committee on Freedom of Association in Case No. 2923 (see 388th Report, March 2019).

*Article 3. Freedom and autonomy of workers' and employers' organizations to appoint their representatives. Reactivation of the Higher Labour Council.* The Committee notes with ***interest*** that, according to the Government, the Higher Labour Council, after having been inactive since 2013, was set up as of 16 September 2019. In this connection, the Committee refers to its comments on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

*Articles 2 and 3. Legislative reforms pending.* For several years, the Committee has been requesting the Government to take the necessary measures to amend the following legislative and constitutional provisions:

- articles 219 and 236 of the Constitution of the Republic and section 73 of the Civil Service Act (LSC), which exclude certain categories of public servants from the right to organize (members of the judiciary, public servants who exercise decision-making authority or are in managerial positions, employees with duties of a highly confidential nature, private secretaries of high-ranking officials, diplomatic representatives, assistants of the Public Prosecutor, or auxiliary agents, assistant prosecutors, labour prosecutors and delegates);
- section 204 of the Labour Code, which prohibits membership of more than one trade union, so that workers who have more than one job in different occupations or sectors are able to join trade unions;
- sections 211 and 212 of the Labour Code (and the corresponding provision of the LSC on unions of public service employees), which establish, respectively, the requirement of a minimum of 35 members to establish a workers' union and a minimum of seven employers to establish an employers' organization, so that these requirements do not hinder the establishment of workers' and employers' organizations in full freedom;
- section 219 of the Labour Code, which provides that, in the process of registering the union, the employer shall certify that the founding members are employees, so as to ensure that the list of the applicant union's members is not communicated to the employer;
- section 248 of the Labour Code, by eliminating the waiting period of six months required for a new attempt to establish a trade union when its registration has been denied;
- article 47(4) of the Constitution of the Republic, section 225 of the Labour Code and section 90 of the LSC, which establish the requirement to have attained the age of majority and to be a national of El Salvador by birth in order to hold office on the executive committee of a union, which are excessive restrictions of the right of the workers freely to elect their representatives;
- article 221 of the Constitution of the Republic so as to limit the prohibition of the right to strike in the public service to officials exercising authority in the name of the State and those who perform their duties in essential services in the strict sense of the term (while recalling that it is also possible to restrict the exercise of the right to strike through the establishment of minimum services in public services of fundamental importance);
- section 529 of the Labour Code so that when a decision is taken to call a strike, only the votes cast are taken into account, and also that the principle is recognized of the freedom to work of non-strikers and the right of employers and managerial staff to enter the premises of the enterprise or

establishment, even where the strike has been decided upon by an absolute majority of the workers; and

– section 553(f) of the Labour Code, which provides that strikes shall be declared unlawful "where inspection shows that the striking workers do not constitute at least 51 per cent of the personnel of the enterprise or establishment," which is inconsistent with section 529(3) of the Labour Code and which restricts excessively the right of workers' organizations to organize their activities in full freedom and to formulate their programmes.

In this respect, the Committee notes that the Government duly notes the above-mentioned recommendations, indicates that consideration could not be given to proposals for reform owing to the inactivity of the Higher Labour Council over six years, and states that, with the reactivation of the latter, these, and other proposals for labour legislation reform, will be submitted to it. The Committee duly notes that, as specified by the Government, ILO technical assistance has been requested in this regard. ***Hoping to be able to note progress in the near future on these long-pending legislative reform matters, the Committee urges the Government, following tripartite consultation, to take the necessary measures to ensure conformity of the above provisions with the Convention.***

## Equatorial Guinea

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee again recalls that it has been asking the Government for a number of years to: (i) amend section 5 of Act No. 12/1992, which provides that employees' organizations may be occupational or sectoral – so that workers may, if they so desire, establish enterprise trade unions; (ii) amend section 10 of Act No. 12/1992, which provides that for an occupational association to obtain legal personality it must, inter alia, have a minimum of 50 employees – so as to reduce the number of workers required to a reasonable level; (iii) confirm that, as a result of a revision of the Fundamental Act in 1995 (Act No. 1 of 1995), the right to strike is recognized in public utilities and is exercised under the conditions laid down by law; (iv) provide information on the services deemed to be essential, and on how the minimum services to be ensured are determined, as provided for in section 37 of Act No. 12/1992; and (v) state whether public servants who do not exercise authority in the name of the State enjoy the right to strike (section 58 of the Fundamental Act).

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

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

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

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it will proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

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

*Article 6. Right of public servants not engaged in the administration of the State to engage in collective bargaining.* The Committee notes that, according to ITUC's comments, the right of workers in the public

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

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

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

## Eritrea

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Civil liberties*. In its previous comments, the Committee requested the Government to provide information on how it ensures the rights of trade unions to organize their administration and activities and to hold public meetings and demonstrations in practice. In this respect, the Government reiterates earlier statements regarding provisions available under the Labour Proclamation of 2001, and indicates that in March 2017, the National Confederation of Eritrean Workers (NCEW) held its seventh congress and elected its representatives in full freedom. Furthermore, a basic workers' association was recently established in Bisha Mining Share Company, where the parties were engaged in a process of collective bargaining. The Government indicates that the latter development demonstrates that the NCEW has extended its coverage to new sectors. While taking note of this information, the Committee ***regrets*** that the Government provides no information on any measures taken in the last several years to ensure protection for the exercise of the right to hold demonstrations and public meetings in law and in practice. ***Recalling that the right of trade unions to hold public meetings and demonstrations is an essential aspect of freedom of association, the Committee reiterates its request.***

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Compulsory national service.* The Committee notes that pursuant to sections 19 and 30 of the National Service Proclamation (No. 82/1995), those performing work within the framework of national service are subject to martial law and regulations and that section 3 of the Labour Proclamation excludes members of the military, police and security forces from the scope of the labour law. The Committee further notes the discussions that took place in the Conference Committee for the Application of Standards (CAS) concerning the application of the Forced Labour Convention, 1930 (No. 29), and its 2015 and 2018 conclusions which make reference to large-scale and systematic practice of imposing compulsory labour on the population for an indefinite period of time within the framework of programmes related to the obligation of national service. This practice has also been reported extensively by the Commission of Inquiry on Human Rights in Eritrea established by the United Nations Humans Rights Council, as well as the Special Rapporteur on the Situation of Human Rights in Eritrea (Special Rapporteur) appointed by the same Council. The Committee notes with ***deep concern*** that large numbers of Eritrean nationals have been denied the right to organize for indefinite periods of their active life while they were forced to perform work as part of their obligation of compulsory national service. The Committee recalls that the exception in *Article 9(1)* of the Convention is justified on the basis of the responsibility of the police, security and armed forces for the external and internal security of the State. This exception must be construed in a restrictive manner, so as to apply only to purely military and policing functions and not to the whole active population mobilized for work in non-military areas as diverse as agriculture, construction, civil administration and education for indefinite periods of time under martial law that denies them the right to organize. ***In view of the above considerations, and noting the end of "no war no peace situation" that had lasted since the 1998–2000 border war with Ethiopia and the formal restoration of relations between the two countries in July 2018, the Committee urges the Government to end the general mobilization of the population for indefinite periods of time under martial law and to revoke or amend the National Service Proclamation accordingly, so as to ensure that Eritrean nationals are not denied the right to organize beyond the legally restricted period of military service, during which they would perform work of purely military character.***

*Civil servants.* The Committee recalls that in its 2014 observation, it had observed with concern that the Government had been referring to the imminent adoption of the Civil Servants' Proclamation for the last 12 years, and had urged the Government to take all the necessary measures to expedite the adoption process of the Proclamation so as to grant without further delay the right to organize to all civil servants in accordance with the Convention, and that it repeated the same observation with concern in 2016 and 2017. The Committee notes with ***deep concern*** that the Government once again indicates that the drafting process of this Act is still at its final stage for approval. In this respect, the Committee notes that in her latest report, the Special Rapporteur informed the UN Human Rights Council that there was still no parliament in Eritrea where laws could be discussed and questions of national importance debated (A/HRC/38/50 of 25 June 2018, paragraph 28). The Committee is bound to note that the institutional standstill described in the Special Rapporteur's report does not favour the imminent adoption of new legislation. ***Recalling that civil servants, like all other workers with the only exception of armed forces and the police, should enjoy the right to establish and join organizations of their own choosing, the Committee urges the Government to take all the necessary measures to ensure that the adoption process of the Civil Servants' Code is concluded and the right to organize is guaranteed to all civil***

***servants without further delay. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.***

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

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

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Legislative issues.* The Committee recalls that since its first examination of the application of the Convention in Eritrea in 2002 it had focused on a number of legislative issues and requested the Government to amend the legislation or adopt additional laws and regulations in order to address the following matters:

– *Articles 1 and 2 of the Convention. Protection against anti-union discrimination and acts of interference.* The Committee had noted that the 2001 Labour Proclamation does not provide for an adequate protection against anti-union discrimination and acts of interference in terms of period of protection, the persons protected and the sanctions and remedies provided in law, and had requested the Government to amend the Proclamation so as to strengthen the protection against anti-union discrimination and acts of interference.

– *Articles 1, 2 and 4. Domestic workers.* The Committee had noted that the Labour Proclamation does not explicitly grant the rights set out in the Convention to domestic workers as section 40 thereof entitles the Minister to determine by regulation the provisions of the Proclamation that apply to these workers. The Committee had expressed the hope that the guarantees enshrined in the Convention will soon be explicitly afforded to domestic workers by way of a regulation.

– *Article 6. Public sector*. The Committee had noted that the civil servants in the Central Personnel Administration who are not engaged in the administration of the State are excluded from the scope of the Labour Proclamation and had requested the Government to explicitly recognize their rights to protection against anti-union discrimination and acts of interference, as well as their right to negotiate collectively their conditions of employment in the new Civil Service Proclamation.

The Committee notes that the Government: (i) recognizes that legislative measures should be taken as requested by the Committee in order to ensure adequate protection against anti-union discrimination and acts of interference but that the amendment process has not yet been finalized and the Ministry of Labour and Human Welfare intends to conduct a tripartite workshop aiming at finalizing the drafting process; (ii) with regard to domestic workers, indicates that giving effect to section 40 of the Labour Proclamation requires sufficient time and skill, and the new Civil Code contains certain provisions linked with the rights of domestic workers servants under the Convention, without however providing the text of the relevant provisions of the new Civil Code; and (iii) states that the draft Public Service Code has not been enacted yet either. The Committee notes that the Government replies concerning the legislative issues highlighted in the Committee's comments reveal institutional shortcomings that have hindered the conclusion of drafting and enactment process of new legislation for many years. The Committee notes in this regard that the United Nations Commission of Inquiry on Human Rights in Eritrea had found that "since there is no legislation that regulates law-making procedures, codes, decrees and domestic legislation is prepared and adopted in the absence of a clear, transparent, consultative and inclusive process. Nobody really knows the procedure leading to the enactment of legislation or the author of a specific decree" (A/HRC/29/CRP.1, 5 June 2015, paragraph 299). The Committee further notes that in her latest report, the Special Rapporteur on the Situation of Human Rights in Eritrea, appointed by the United Nations Human Rights Council, informs the Council that there is still no parliament in Eritrea where laws could be discussed and questions of national importance debated (A/HRC/38/50, 25 June 2018, paragraph 28). The Committee notes that the institutional standstill described in the Special Rapporteur's report does not favour the imminent adoption of new legislation. ***The Committee therefore urges the Government to take all the necessary measures so that the processes of drafting and enacting new legislation with a view to ensuring the conformity of Eritrean law with the Convention can be successfully brought to conclusion. The Committee further encourages the Government to seek the technical assistance of the Office with a specific focus on the issues raised in this observation.***

*Articles 4, 5 and 6. Promotion of collective bargaining. Compulsory national service.* The Committee notes that pursuant to articles 19 and 30 of the National Service Proclamation (No. 82/1995), the Eritrean nationals performing work within the framework of national service are subject to martial law and regulations and that article 3 of the Labour Proclamation of Eritrea excludes members of the military, police and security forces from the scope of labour law. The Committee notes that it stems from the conjunction of the different provisions mentioned that the persons performing work within the national service are not covered by the Labour Proclamation provisions related to collective bargaining. The Committee further notes the discussions that took place in the International Labour Conference Committee for the Application of Standards (CAS) concerning the application of Forced Labour Convention, 1930 (No. 29), and the conclusions of the CAS in this regard in June 2015 and 2018 respectively, where reference was made to a systematic and large-scale practice of requiring Eritrean citizens to perform work for an indefinite period of time within the framework of programmes related to the obligation of national service involving numerous civilian activities such as construction and agriculture. The Committee recalls that the only restrictions to the scope of application of the Convention refer to the armed forces and the police as well as to the public servants engaged in the administration of the State (*Articles 5* and *6* of the Convention). The Committee further highlights that the exception in *Article 5* of the Convention, like the one embodied in *Article 9* of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), is justified on the basis of the responsibility of the police and armed forces for the external and internal security of the State. This exception must therefore be restrictively interpreted, applying only to purely military and policing functions. As a result, persons engaged, under martial law, in activities such as agriculture, construction, civil administration and education that do not fall within military or policing activities or the

administration of the State should be able to bargain collectively their conditions of employment. In view of the above legal and factual considerations, the Committee notes with ***concern*** that large numbers of Eritrean nationals are being denied the right to collective bargaining for indefinite periods of their active life while they are performing civilian activities that fall under the scope of the Convention as part of their obligation of compulsory national service. ***Noting the end of the "no war no peace situation" enduring since the 1998–2000 border war with Ethiopia and the formal restoration of relations between the two countries in July 2018, the Committee urges the Government to take the necessary measures so as to ensure that Eritrean nationals are not denied the right to bargain collectively beyond the scope of the exceptions set out in Articles 5 and 6 of the Convention.***

*Promotion of collective bargaining in practice.* ***The Committee requests the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements.***

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

## Eswatini

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

The Committee notes the observations received on 1 September 2019 from the International Trade Union Confederation (ITUC) alleging violence by the security forces against peaceful protest actions between August and October 2018 and in September and October 2019, as well as the Government's reply thereon, both of which are addressed in this comment.

The Committee notes the observations of the Trade Union Congress of Swaziland (TUCOSWA) denouncing similar acts of police violence and disruption against peaceful demonstrations. TUCOSWA further alleges other violations of the Convention, including: (i) the refusal of a number of companies to recognise the Amalgamated Trade Union of Swaziland (ATUSWA) despite various Arbitration Awards in its favour, thus impairing its ability to develop programmes and activities; (ii) the unilateral declaration by the Police Commissioner of an industrial action as unlawful in September 2018; (iii) the refusal to allow a member of the Swaziland Nurses Association to represent the union during negotiations with the Government on the basis that he is no longer employed, thus violating the right of workers to elect their representatives in full freedom; and (iv) the intimidation and victimization of leaders of the Swaziland National Association of teachers (SNAT) and the Swaziland Electricity Supply Maintenance and Allied Workers Union (SESMAWU). ***The Committee requests the Government to provide its comments thereon.***

*Civil liberties and trade union rights. Police violence against peaceful demonstrations*. The Committee notes that the ITUC alleges the following incidents during protest actions: (i) in September 2018, members of the ATUSWA were arrested and beaten up by the police during protests in five garment and textile factories involving more than 10,000 workers. According to the ITUC, the police resorted, without provocation, to disperse the workers using tear gas and beating them up; (ii) in October 2018, armed police invaded the Hlatikhulu Government Hospital during a lawful and peaceful protest by nurses. The strike came after a series of protests and rallies violently disrupted by the police; (iii) in September 2019, during a peaceful demonstration of civil servants organized by the SNAT, the National Association of Public Service and Allied Workers Union (NAPSAW) and the Swaziland National Government Accounting Personnel (SNAGAP), members of the police fired teargas, rubber bullets and water cannons at protesters during a march to deliver petitions to the Eswatini Royal Police Services Headquarters, the Ministry of Public Service and the Ministry of Education and Training. According to the ITUC, police intervened and began assaulting the protestors when the crowd diverged from their authorized protest route; and (iv) in October 2019, during a protest march of 8,000 workers in Manzini, the police fired live ammunition into groups of protesters injuring ten workers, including the Secretary General for NAPSAWU's Manzini Branch (Dumisani Nkuna). According to the ITUC, further violence erupted as the protestors reached the Manzini Regional Education Office and at least 30 workers were injured. The Government resorted to the National Industrial Relations Court to have the strike declared illegal under reasons of posing "threats to national interest." The Court handed down an interim order halting the strike action.

The Committee notes that, in reply to the observations of the ITUC, the Government informs of the setting up, in September 2019, of an Investigation Committee composed of four members, led by a senior judicial officer. The Investigation Committee was appointed to give effect to the recommendation of the Committee on Freedom of Association to initiate an independent investigation to determine the justification of the action of the police denounced by the ITUC (see 388th Report, March 2019, Case No. 2949). Otherwise, the Government recalls that the statutory Labour Advisory Board (LAB), being a tripartite advisory structure established in terms of Part III of the Industrial Relations Act, had initiated its own investigations with regard to the industrial action matters of September 2018 denounced by the ITUC. The LAB held meetings in November and December 2018 to listen to submissions from affected stakeholders including TUCOSWA, ATUSWA and SNAT, affected employers and the Police, in an effort to obtain and examine the detailed facts surrounding the conduct of these industrial actions in terms of compliance

with the established legislative procedures. While the LAB was scheduled to issue findings in early 2019, this was overtaken by the decision of the Government to appoint the Independent Investigation Committee. Legal Notice No.183 of 2019 (Government Gazette of 12th September 2019) listed the functions of the Independent Investigation Committee which include: (i) determining compliance of all the industrial actions mentioned by the ITUC and TUCOSWA in their letter of complaint of September 2018, as well as the extent and justification for the involvement of the security forces in the industrial actions; (ii) investigating the alleged conduct by the police invading *Hlathikhulu* Government Hospital; (iii) interviewing witnesses, conducting site inspections and examining any documentary, electronic and other forms of evidence to prove or dispel elements of violence or intimidation incidental to the industrial actions mentioned by the ITUC in its letters of September 2018 and September 2019; and (iv) making findings on the conduct of the industrial actions and make recommendations on any gaps regarding the law which impact on the regulation and conduct of industrial action. On 28 September 2019, the Independent Investigation Committee extended invitation to all interested persons and stakeholders to indicate their interest to make submission. The Government states that the swift establishment of the Investigation Committee demonstrates its engagement to promote the application of the Convention.

The Government further denies the ITUC allegation that police brutality against striking workers is still prevalent and underlines that the industrial actions which took place within the period August to October 2018 are not a reflection of the general behaviour of the police against industrial actions in the country – if it is assumed that these industrial actions were characterised by police brutality. The Government indicates that during 2018 over ten other industrial actions organized by various trade unions all over the country weren't disrupted by acts of violence or brutality from the police.

The Committee must express its ***concern*** over the serious allegations of recurrent violent attacks and disruption by security forces against peaceful trade union gatherings, including alleged violent attacks occurring after the establishment of the new Investigating Committee by the Government to improve the handling of trade union gatherings in public places. In this respect, the Committee recalls that the exercise of trade union rights is incompatible with violence or threats of any kind. It is therefore important that all allegations of violence against workers who are organizing or otherwise defending workers' interests be thoroughly investigated with a view to establishing the facts, determining violations and responsibilities, punishing the perpetrators and preventing the recurrence of such acts. The Committee welcomes the decision of the Government to set up the Independent Investigation Committee and to extend its mandate to cover the industrial actions referred to by the ITUC in its communications of September 2019, and the police firing of live ammunition into groups of protesters in October 2019, along with those listed in the ITUC communication of September 2018. The Committee notes that the Investigation Committee was given an extended period until March 2021 to submit a report with findings and the Government's intention to transmit the outcome of the investigations. ***The Committee requests the Government to provide information with regard to the outcome of the Independent Investigation Committee, as well as any measures taken by the Government as a follow-up. With reference to its previous comments, the Committee also requests the Government to provide the results of legal and mediation proceedings in cases where the unions had subsequently resorted to the Conciliation Mediation and Arbitration Commission (CMAC) and the Industrial Court.***

The Government informs of the adoption of the Police Service Act (No. 22 of 2018), noting that it contains enhanced provisions in line with the promotion of the exercise of the right to freedom of association and includes provisions so that the abuse of power by members of the police may lead to disciplinary action (Section 49(1)(I)). The Government stresses the relevance of having included such provisions in the law regulating the discipline of police officers, so as to ensure the highest exercise of restraint by police officers in their line of duty for the maintenance of public safety and public order during industrial and protest actions.

Furthermore, the Government reports on the technical assistance of the Office in 2019 for the dissemination programme of the Code of Good Practice for Industrial and Protest Actions (Legal Notice No. 202 of 2015), the Code of Good Practice on Gatherings (Legal Notice No. 201 of 2017) and the Public Order Act of 2017, as a capacity-building strategy of the various stakeholders on how industrial and protest actions can be well managed in the country, in order to minimise unwarranted confrontations between protestors and members of the law enforcement agencies and Municipal Councils. Special sessions are planned for members of Parliament, Cabinet Ministers and executive leaders of trade unions. The Committee reiterates its hope that this dynamic will contribute to a conducive climate free from violence, pressure and threats of any kind on the occasion of peaceful demonstrations by workers. ***Noting the Government's intention to report on the impact of the dissemination programme of the Codes of good practices, the Committee requests the Government to continue to provide information on measures taken to ensure that trade union rights to engage in protest and industrial action in defence of occupational interests are indeed protected, both in law and practice, including information on violations identified and penalties imposed pursuant to section 49(1) of the Police Service Act, No.22 of 2018.***

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

# Fiji

## Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2002)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 and 15 September 2020 and of the Fiji Trades Union Congress (FTUC) received on 23 May and 13 November 2019, denouncing violations of civil liberties and lack of progress on the legislative reform. ***The Committee notes the Government's general reply thereto, as well as to the 2017 and 2018 FTUC observations, and requests it to provide further details on the specific incidents of alleged violations of civil liberties reported by the FTUC.***

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (hereafter the Conference Committee) in June 2019 concerning the application of the Convention. It notes that the Conference Committee observed serious allegations concerning the violation of basic civil liberties, including arrests, detentions and assaults, and restrictions of freedom of association and noted with regret the Government's failure to complete the process under the Joint Implementation Report (JIR). The Conference Committee called upon the Government to: (i) refrain from interfering in the designation of the representatives of the social partners on tripartite bodies; (ii) reconvene the Employment Relations Advisory Board (ERAB) without delay in order to start a legislative reform process; (iii) complete without further delay the full legislative reform process as agreed under the JIR; (iv) refrain from anti-union practices, including arrests, detentions, violence, intimidation, harassment and interference; (v) ensure that workers' and employers' organizations are able to exercise their rights to freedom of association, freedom of assembly and speech without undue interference by the public authorities; and (vi) ensure that normal judicial procedures and due process are guaranteed to workers' and employers' organizations and their members. The Conference Committee also requested the Government to report on progress made towards the implementation of the JIR in consultation with the social partners by November 2019 and called on the Government to accept a direct contacts mission to assess progress made before the 109th Session of the International Labour Conference. ***While duly noting the context of the current COVID-19 pandemic, the Committee trusts that the direct contacts mission requested by the Conference Committee will be able to take place as soon as the situation so permits and, if possible, before the next International Labour Conference.***

*Trade union rights and civil liberties.* In its previous comments, the Committee requested the Government to respond in full detail to the FTUC allegations of continued harassment and intimidation of trade unionists, in particular with respect to its National Secretary, Felix Anthony. The Committee notes the Government's general statement that Mr Anthony has been able to organize and carry out trade union activities without any interference from the Government and that the arrest, search and detention of persons previously alleged by the ITUC and the FTUC were not intended to harass or intimidate trade unionists but to allow the Commissioner of Police to conduct investigations into alleged violations of applicable laws. The Government also affirms that the Commissioner of Police and the Office of the Director of Public Prosecutions are both independent and neither the entities nor their decisions are subject to the direction or control of the Government. The Committee notes, however, the 2020 ITUC allegations that Mr Anthony is currently charged with one count of malicious acts under the Public Order Act, 1969 in relation to his trade union activities following the mass termination of 2,000 workers' contracts by the Fiji Water Authority in April 2019, which led to protests and the arrest of trade unionists and union members, including Mr Anthony. The ITUC alleges that Mr Anthony was to appear before the court on 1 September 2020 and if convicted, he could receive a fine of up to US$2,500 or be imprisoned for up to three years. The Committee notes the Government's reply that the arrest and subsequent criminal prosecution of Mr Anthony are not a targeted attack but a matter that is criminal in nature and that the presiding court will make a determination on the criminal charges and penalties imposed, if any. The Committee further notes with ***concern*** the ITUC and FTUC allegations of continued intimidation by the police, arrests, detention, interrogation and the filing of criminal charges against trade unionists, as well as prolonged confiscation of personal and union property and violent dispersal of gatherings between April and June 2019. ***Recalling the interdependence between civil liberties and trade union rights and emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations, the Committee requests the Government to make serious efforts to ensure that state entities and their***

***officials refrain from anti-union practices, including arrests, detentions, violence, intimidation, harassment and interference in trade union activities, so as to contribute to an environment conducive to the full development of trade union rights. The Committee requests the Government to consider issuing instructions to the police and the armed forces in this regard and to provide training to ensure that any actions taken during demonstrations respect the basic civil liberties and fundamental labour rights of workers and employers. Furthermore, the Committee firmly expects that any charges against Mr Anthony related to the exercise of his trade union activities will be immediately dropped.***

*Appointment of members to and the functioning of the Employment Relations Advisory Board to review labour legislation.* In its previous comments, having observed the FTUC concerns that the Government had systematically dismantled tripartism by removing or replacing the tripartite representation on a number of bodies with its own nominees, the Committee requested the Government to provide detailed information on the manner in which it designated individuals to these bodies and the representative nature of the organizations that appeared therein. The Committee notes the detailed reply provided by the Government on the appointment of members to the ERAB, the Fiji National Provident Fund, the Fiji National University, the Wages Council and the Air Terminal Service (Fiji) Limited. The Committee also notes the Government's clarification that, in addition to the ERAB, the National Occupational Health and Safety Advisory Board (NOHSAB) and the National Employment Centre Board (NECB) also have tripartite membership. The Government further indicates, with regard to the ERAB, that: (i) the Minister for Employment is the appointing authority and representatives of workers and employers are appointed from persons nominated by workers' and employers' organizations; (ii) appointment of members is undertaken through a consultation process to allow expanded representation of workers from various organizations; (iii) there is no interference from the Government in the designation of representatives of the social partners; and (iv) as the current ERAB membership ended in October 2019, the social partners were invited to submit nominees and both the Fiji Commerce and Employers Federation (FCEF) and the FTUC have already done so at the end of October 2019. The Committee observes, however, that, according to the FTUC, there is no indication as to when the appointment of ERAB members will take place, despite the urgency of the situation, and that the ITUC remains concerned about government manipulation of national tripartite bodies, thus curtailing the possibility of genuine tripartite dialogue. ***The Committee trusts that the Government will refrain from any undue interference in the nomination and appointment of members to the ERAB and to other tripartite bodies, and will ensure that the social partners can freely designate their representatives. The Committee expects the appointment of ERAB members to take place without delay so as to allow this mechanism to reconvene and meet regularly in order to pursue the labour law review and meaningfully address all outstanding matters in this regard.***

*Progress on the review of labour legislation as agreed in the Joint Implementation Report.* The Committee previously noted with regret the apparent lack of progress on the review of the labour legislation as agreed in the JIR and urged the Government to take the necessary measures with a view to rapidly bringing the legislation into line with the Convention. The Committee notes the Government's indication that several meetings took place with the tripartite partners and the ILO between June 2018 and August 2019, in which it was agreed that a number of matters under the JIR have already been implemented and that the tripartite partners are making good progress on the outstanding matters concerning the review of labour laws and the list of essential services and industries, despite the FTUC's boycott and withdrawal from the tripartite dialogue within the ERAB in June 2018, February and August 2019. The Committee notes that, according to the FTUC, the Government's reference to boycott clearly reveals that there remain issues in the appointment process of ERAB members and shows the Government's lack of genuine commitment to previously agreed timelines that had led to the boycott. The Committee notes from the resolutions adopted at the 48th biennial delegates conference of the FTUC provided by the Government in its supplementary report that: (i) the FTUC maintains its position on boycotting participation in any tripartite forums until its role as an important stakeholder with sincere engagement is recognized; and (ii) the FTUC expresses concern about the Government's failure to uphold its commitment to engage in genuine social dialogue and to take any positive action to review the labour legislation, and denounces the way in which the Ministry of Employment, Productivity and Industrial Relations has handled the review process. The Committee further observes that the ITUC calls on the Government to return to the negotiating table with the social partners to fully implement the JIR and to grant safeguards and guarantees to those participating in the dialogue. Finally, the Committee welcomes the Government's indication in its supplementary report that a detailed Plan of Action with timelines was elaborated with the ILO Country Office in September 2020 to give guidelines to the tripartite partners and the Plan of Action enumerates issues to be addressed in order to implement recommendations of the ILO supervisory mechanisms, including the reconvening of the ERAB, the ERA matrix, the reform of the essential services list, training and sensitization of the police on civil liberties and freedom of association, as well as the organization of the direct contacts mission. ***In light of the above, the Committee urges the Government to take all necessary measures to continue to review the labour legislation within the reconvened ERAB, as agreed in the JIR and the September 2020 Plan of Action, with a view to rapidly bringing it into line with the Convention, taking into account the Committee's comments below.***

*Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing.* The Committee had previously noted that the following issues were still pending after the adoption of the Employment Relations (Amendment) Act, 2016: denial of the right to organize to prison guards (section 3(2)); and excessively wide discretionary power of the Registrar in deciding after consultation whether or not a union meets the conditions for registration under the Employment Relations Promulgation, 2007 (ERP) (hereinafter, ERA, section 125(1)(a) as amended). The Committee notes, on the one hand, the Government's indication that the tripartite partners met in August 2019 to discuss the proposed amendments and all clauses in the ERA matrix but observes, on the other hand, the ITUC and the FTUC allegation that no progress has been achieved since then and the matrix agreed by the tripartite partners is still pending with the Solicitor General's office. ***In the absence of any substantial progress in this regard, the Committee urges the Government to finalize the process of review on the basis of the tripartite-agreed matrix so that the necessary amendments for bringing the legislation into full conformity with the Convention may be rapidly submitted to Parliament and adopted.***

*Article 3. Right of organizations to elect their representatives in full freedom, organize their activities and formulate their programmes.* The Committee had previously observed that, pursuant to section 185 of the ERA as amended in 2015, the list of industries considered as essential services included: (i) the services listed in Schedule 7 of the ERP; (ii) the essential national industries declared under the former Essential National Industries (Employment) Decree, 2011 (ENID) (financial industry, telecommunications industry, civil aviation industry and public utilities industry), and the corresponding designated companies; and (iii) the Government, statutory authorities, local authorities and government commercial companies (following the adoption of the Public Enterprise Act, 2019, these are now referred to as public enterprises – an entity controlled by the State and listed in Schedule 1 of the Act or designated as such by the Minister).

The Committee welcomes the Government's indication that, as agreed in the JIR and with the technical assistance of the Office, a workshop was held on 16 and 17 October 2019 with the participation of the tripartite partners to consider, gauge and determine the list of essential services and industries. The Committee also welcomes that, as a result of the workshop, the tripartite parties agreed on a time-bound plan of action to review the existing list of essential services within the ERAB and to engage in discussion with the aim of restricting limitations on the right to strike to essential services in the strict sense of the term and public servants exercising authority in the name of the State. The Government informs that it has received proposals for amendments from representatives of workers and employers and is currently considering them. The Committee notes, however, the concerns expressed by the FTUC that due to the Minister's absence from the workshop, all decisions had to be referred to the Solicitor General's office and that the timelines continue to be ignored without any justification for the delay in convening meetings to finalize the essential national industries list and the ERA matrix.

The Committee wishes to reiterate that while some essential industries are defined in line with the Convention, namely those which had been initially included in Schedule 7 of the ERP, other industries where strikes may now be prohibited due to the inclusion of the ENID in the ERA do not fall within the definition of essential services in the strict sense of the term, including: statutory government authorities; local, city, town or rural authorities; workers in managerial positions; the financial sector; radio, television and broadcasting services; civil aviation industry and airport services (except air traffic control); public utilities industry in general; pine, mahogany and wood industry; metal and mining sector; postal services; and public enterprises in general. The Committee also wishes to emphasize that provisions which prohibit the right to strike on the basis of potential detriment to public interest or economic consequences are not compatible with the principles relating to the right to strike. The Committee recalls, however, that for services which are not considered essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population or in public services of fundamental importance in which it is important to deliver the basic needs of users, a negotiated minimum service, as a possible alternative to fully restricting industrial action through imposed compulsory arbitration, could be appropriate. The right to strike may also be restricted for public servants but only those exercising authority in the name of the State. ***Given the extensive breadth of the services where workers' rights to take industrial action may be prohibited, as noted above, the Committee urges the Government to meaningfully engage with the social partners without further delay to review the list of essential services, as agreed in the JIR and the October 2019 and the September 2020 action plans, so as to restrict limitations on the right to strike to essential services in the strict sense of the term and public servants exercising authority in the name of the State. The Committee requests the Government to provide information on the progress achieved in this regard.***

In addition, the Committee has been requesting for a number of years that the Government take measures to review numerous provisions of the ERA. In the absence of any progress reported in this regard, the Committee recalls that the following issues in the ERA are still pending: obligation of union officials to be employees of the relevant industry, trade or occupation for a period of not less than three months (section 127(a) as amended); prohibition of non-citizens to be trade union officers (section 127(d)); interference in union by-laws (section 184); excessive power of the Registrar to request detailed and

certified accounts from the treasurer at any time (section 128(3)); provisions likely to impede industrial action (sections 175(3)(b) and 180); compulsory arbitration (sections 169 and 170, section 181(c) as amended, new section 191BS (formerly 191(1)(c)); penalty in form of a fine in case of staging an unlawful but peaceful strike (sections 250 and 256(a)); provisions likely to impede industrial action (section 191BN); penalty of imprisonment in case of staging a (unlawful or possibly even lawful) peaceful strike in services qualified as essential (sections 191BQ(1), 256(a), 179 and 191BM); excessively wide discretionary powers of the Minister with respect to the appointment and removal of members of the Arbitration Court and appointment of mediators, calling into question the impartiality of the dispute settlement bodies (sections 191D, 191E, 191G and 191Y); and compulsory arbitration in services qualified as essential (sections 191Q, 191R, 191S, 191T and 191AA). In this regard, the Committee observes, from the resolutions adopted at the 48th biennial delegates conference of the FTUC provided by the Government in its supplementary report, the concerns expressed by the FTUC about the inefficiency of the Arbitration Court and the Employment Tribunals, as well as the need to improve the current dispute resolution system in order to reduce considerable delays in resolving disputes. ***The Committee therefore urges the Government to take measures to review the above provisions of the ERA, in accordance with the agreement in the JIR and in consultation with the representative national workers' and employers' organizations, with a view to their amendment, so as to bring the legislation into full conformity with the Convention.***

*Public Order (Amendment) Decree (POAD).* With regard to its previous comments concerning the practical application of the POAD, the Committee notes that the Government simply reiterates that the POAD facilitates the maintenance of public order and that prior permission is required to ensure the carrying out of administrative functions and the provision of law enforcement officers to maintain order. While further noting that the Government points to two instances, in October 2017 and January 2018, in which the FTUC obtained a permit and undertook marches, the Committee observes that, according to the FTUC, its recent requests to march from May, August and November 2019 were all refused. The ITUC and the FTUC denounce that permission for union meetings and public gatherings continues to be arbitrarily refused and that section 8 of the POAD has been increasingly used to interfere in, prevent and frustrate trade union meetings and assemblies. ***The Committee urges the Government to take the necessary measures to bring section 8 of the POAD into line with the Convention by fully repealing or amending this provision so as to ensure that the right to assembly may be freely exercised.***

*Political Parties Decree.* The Committee had previously noted that, under section 14 of the 2013 Political Parties Decree, persons holding an office in any workers' or employers' organization are banned from membership or office in any political party and from any political activity, including merely expressing support or opposition to a political party; and that sections 113(2) and 115(1) of the Electoral Decree prohibit any public officer from conducting campaign activities, and any person, entity or organization that receives any funding or assistance from a foreign government, intergovernmental or non-governmental organization to engage in, participate in or conduct any campaign (including organizing debates, public forums, meetings, interviews, panel discussions, or publishing any material) that is related to the election. In its previous comments, the Committee further observed that the Political Parties Decree was unduly restrictive in prohibiting membership in a political party or any expression of political support or opposition by officers of employers' or workers' organizations, and requested the Government once again to take measures to amend the above provisions, in consultation with the representative national workers' and employers' organizations. ***Observing that the Government does not provide any new information and noting the ITUC concerns about the restrictive effect of the Political Parties Decree on legitimate trade union activities, the Committee reiterates its request in this respect.***

*Article 4. Dissolution and suspension of organizations by administrative authority.* The Committee notes the ITUC allegations that in February 2020, the Government suspended five trade unions for failing to submit their annual audited reports and indicated that they faced penalties and deregistration if they continued to fail to comply with the legislation (the Hot Bread Kitchen Employees Trade Union, the Fiji Maritime Workers Association, the Viti National Union of I-taukei Workers, BPSS Co Limited Workers and Carpenters Group of Salaries Association and the I-taukei Land Trust Board Workers Union). According to the ITUC, such arbitrary measures represent a clear attempt at quashing independent trade unions and the legislation does not provide for sufficient guarantees for trade unions to operate without undue interference by the authorities, as demonstrated by section 128(3) of the ERA, which gives the Registrar excessive power to request detailed and certified accounts from the treasurer at any time. The Committee notes that the Government refutes this allegation as baseless and untrue and asserts that any suspension of trade union activity is done in accordance with section 133(2) of the ERA. With regard to the mentioned trade unions, the Government informs that: (i) in June 2019, the Registrar issued notices to 11 unions for failure to submit their annual returns under section 129 of the ERA; in August 2019, the Registrar issued a follow-up notice; and in September 2019, seven trade unions, which had not rectified their breach, were issued a notice of suspension; (ii) the notice of suspension provided the unions two months to show cause as to why their registration should not be suspended; (iii) despite the notice, four unions failed to rectify their breach and in June 2020, the Registrar published a notice of cancellation concerning the four unions; and (iv) the unions were again given two months to rectify their breach and the Registrar only cancelled

the registration of those unions that failed to respond to the notice, whereas the remaining three suspended unions were able to submit their annual reports. The Government adds that there are currently 46 active unions in Fiji, which freely conduct their activities and the Registrar does not have the authority to dictate how they operate or function under their constitution, thus ensuring absolute freedom for trade unions to deal with their affairs. The Committee takes due note of the steps taken by the Registrar before suspending or cancelling the registration of the above trade unions and recalls that under section 139 of the ERA, a trade union may appeal a decision against suspension or cancellation of registration to the competent court. ***Further recalling however that the dissolution and suspension of trade union organizations constitute extreme forms of interference and should be reserved for serious breaches of the law after exhausting other possibilities with less serious effects for the organizations, and observing the ITUC's allegations that these measures constitute an attempt at quashing independent trade unions, the Committee requests the Government to consider, in consultation with the most representative organizations, any measures that are appropriate to ensure that the procedures for suspension or cancellation of trade union registration are, both in law and in practice, in full accordance with the guarantees set out in the Convention.***

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year (see *Article 4* below), as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 and of the Fiji Trades Union Congress (FTUC) received on 23 August 2018, and 23 May and 13 November 2019, denouncing massive dismissals of workers, including members of the National Union of Workers (NUW), restrictions on collective bargaining, especially in the public sector and essential services, and lack of progress on the legislative reform. The Committee notes the Government's reply thereto. In its previous comment, the Committee also requested the Government to provide a reply to the 2016 observations from Education International and the Fiji Teachers' Union (FTU) concerning the lack of consultation in regard to wages and terms and conditions of employment. The Committee notes the Government's reply that it has been continuously meeting with representatives of the FTU and the Fijian Teachers' Association (FTA) in relation to the terms and conditions of employment, including in November 2018 and February 2019.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* With reference to the long-standing dispute in relation to the Vatukoula Mining Company (concerning the refusal to recognize a union and the dismissal of striking workers over 20 years ago), the Committee recalls that, in its previous comments, it had noted the Government's indication that the Vatukoula Social Assistance Trust Fund (VSATF) had been established to benefit around 800 recipients through money grants and assistance for relocation, small and micro-enterprise development and education for dependants. The Committee noted the completion of a mediation process and requested the Government to supply detailed information on its outcome and the follow-up measures taken to compensate the persons concerned, as well as in relation to the VSATF fund. The Committee notes the Government's indication that, following the mediation process and keeping in mind that it does not have any legal obligation to compensate the concerned workers, it is considering making an ex gratia payment to the workers in view of resolving their grievances but that this will require Cabinet approval. The Committee observes, however, that the Government does not provide any details as to the actual outcome of the mediation or the use of the VSATF fund. ***Recalling that this long-standing dispute has caused great hardship to the dismissed workers, the Committee expects that it will be finally and equitably resolved through the implementation of a mutually satisfactory settlement. The Committee requests the Government to supply information on the outcome of the mediation process and any compensation granted to the concerned workers, including any recourse to the VSATF fund. It also invites the Fiji Mine Workers' Union (FMWU) to provide information on any developments in this regard.***

*Article 4. Promotion of collective bargaining.* In its previous comment, the Committee welcomed the repeal of the Essential National Industries (Employment) Decree, 2011 (ENID) through the adoption of the Employment Relations (Amendment) Act, 2015, as well as the removal of the concept of bargaining units from the Employment Relations Promulgation, 2007 (hereinafter Employment Relations Act (ERA)) through the Employment Relations (Amendment) Act, 2016. The Committee noted with regret however that the abrogation by ENID of the collective agreements in force which it had considered contrary to *Article 4*, had not been addressed and requested the Government to engage in consultations with the representative national workers' and employers' organizations with a view to exploring a mutually satisfactory solution in this respect. The Committee notes the Government's indication that it has provided the necessary conditions under section 149 of the ERA for trade unions and employers' organizations to

engage in good faith employment relations. It indicates that, between 2016 and 2018, there has been successful bargaining between employers and workers resulting in the signing of 63 collective agreements and 59 amendments to collective agreements and that, between August 2019 and September 2020, the Ministry of Employment, Productivity and Industrial Relations registered 20 collective agreements and processed 46 disputes filed by trade unions, including on allegations of failure to engage in negotiations or to implement collective agreements and unfair dismissal of trade union representatives. The Committee observes, however, that, according to the FTUC: (i) all negotiations have been reverted to zero instead of using the abrogated agreements as a basis for discussion; (ii) the topics that can be negotiated in the local Government sector are severely restricted; and (iii) there is a continued refusal of the Government to engage in collective bargaining in the public sector. The FTUC also denounces that all Government-owned entities, including those employing teachers, nurses and civil servants, insist on imposing individual fixed-term contracts without any consultation with the unions, as a way of undermining the right of workers to bargain collectively and achieving the goals of the abrogated ENID. ***In light of the above, the Committee requests the Government to continue to take concrete measures to facilitate negotiations and promote collective bargaining between workers and employers or their organizations in the public sector so as to create an enabling environment for collective agreements to be concluded in replacement of those abrogated by ENID. It also requests the Government to continue to provide information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements, as well as on any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention.***

*Compulsory arbitration.* In its previous comment, the Committee noted that sections 191Q(3), 191(R), 191(S) and 191AA(b) and (c) of the ERA, as amended in 2015, allowed for compulsory conciliation or arbitration and requested the Government to take measures to review the above provisions with a view to their amendment so as to bring the legislation into full conformity with the Convention. The Committee notes the Government's statement that the Minister for Employment, Productivity and Industrial Relations conducts compulsory arbitration only where he or she considers that the dispute may be resolved by conciliation and that one such dispute has been resolved through compulsory conciliation in 2018. The Government informs that the Employment Relations Advisory Board (ERAB) will review the relevant laws and consider any appropriate amendments. The Committee recalls once again that compulsory arbitration is contrary to the voluntary nature of collective bargaining and is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention) or in essential services in the strict sense of the term or in cases of acute national crisis. ***The Committee expects that the above provisions of the ERA will be reviewed within the ERAB, in accordance with the agreement in the Joint Implementation Report and in consultation with the representative national workers' and employers' organizations, with a view to their amendment so as to bring the legislation into full conformity with the Convention.***

## Gambia

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Trade union rights and civil liberties*. In its previous comments, the Committee had requested the Government to provide comments on the observations of the International Trade Union Confederation received on 1 September 2017, which contained allegations of arbitrary arrests of several leaders of the Gambian National Transport Control Association (GNTCA), the death of Mr Sheriff Diba, one of the arrested leaders, while in detention, and the ban imposed on the activities of the GNTCA. The Committee had regretted that the Government had not provided any concrete information on these grave allegations and their investigation and only indicated that the case involving the leaders of the said Association had been discontinued before the High Court of The Gambia and that the parties had been discharged. The Committee recalled the need to make every effort to investigate the alleged grave violations of trade union rights, with a view to apportioning responsibility and punishing the perpetrators. The Committee takes note of the Government's indication that an investigation into the facts surrounding the death of Mr Sheriff Diba could be conducted by the Truth, Reconciliation and Reparation Commission (TRRC), an independent institution mandated to conduct research and investigations into human rights violations committed between July 1994 and January 2017 by the former regime. The Government further indicates that the GNTCA's matter was discharged by the High Court and that it is the responsibility of the GNTCA to re-engage the Government to review their case for consideration. ***The Committee expresses its firm***

***hope that the death of Mr Diba as well as the alleged arbitrary arrests of several leaders of the GNTCA will be duly investigated by the TRRC without delay and requests the Government to provide updated information in this respect. It requests the Government to ensure that the GNTCA is informed about the necessary procedures to obtain a review of its case and also requests that the Government provide a copy of the mentioned High Court order.***

*Article 2 of the Convention. Right of employers and workers to establish and join organizations of their own choosing without previous authorization. Civil servants, prison officers and domestic workers*. In its previous comments, the Committee had noted that the Labour Act of 2007 excludes civil servants, prison officers and domestic workers from its scope (sections 3(2)(a), (c) and (d), respectively). The Committee had also noted the Government's statement that the Labour Act was in the process of being reviewed to allow these categories of workers to enjoy the rights established by the Convention. The Committee takes note of the Government's indication that the review of the Labour Act is still ongoing, and its further indication that separate statutes and regulations cover civil servants and prison officers, and that new regulations could cover domestic workers. ***Recalling the need to take all necessary measures to ensure that civil servants, domestic workers and prison officers enjoy the right to establish and join organizations of their own choosing, the Committee requests the Government to provide detailed information on any developments in this respect, including any revisions in the Labour Bill to extend the right to these three groups, and the specific terms of any other laws or regulations that ensure the right is accorded to each of the three groups.***

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

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Scope of the Convention. Civil servants not engaged in the administration of the State, prison officers and domestic workers*. For a number of years, the Committee has been requesting the Government to indicate if the excluded employees under section 3(2) of the Labour Act (prison officers, domestic workers and civil servants not engaged in the administration of the State) were afforded the right to collective bargaining as well as adequate protection against acts of anti-union discrimination and interference. The Committee recalls that the Government had previously indicated that while the excluded employees under section 3(2) of the Labour Act 2007 are not afforded the right to collective bargaining, they are accorded equal rights under the General Order (GO), Public Service Commission Regulations and the Terms and Conditions of Service for Men and Officers in the Military. The Government had also indicated that it aimed to adopt a new Trade Union Bill 2019 in which the exclusion of these categories of workers may be reviewed to take into consideration *Articles 1* and *2* of the Convention. The Committee notes that the Government has not provided information on any developments regarding the adoption of the Trade Union Bill. ***Recalling that, according to Articles 5 and 6, only members of the armed forces and the police, as well as public servants engaged in the administration of the State may be excluded from the guarantees set out in the Convention, the Committee requests the Government to provide information regarding the adoption of the Trade Union Bill and firmly expects that the rights afforded by the Convention will be ensured for prison officers, domestic workers and civil servants not engaged in the administration of the State.***

*Article 4. Measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or their organizations and workers' organizations*. In its previous comments, the Committee had noted that according to section 130 of the Labour Act, in order to be recognized as a sole bargaining agent, a trade union should represent a certain percentage of employees under a contract of service (30 per cent in the case of a single union and at least 45 per cent if the establishment in question employs at least 100 people; in this case, the bargaining agent could be composed of two or more trade unions). The Committee recalled that if no union in a specific negotiating unit meets the required threshold of representativeness to be able to negotiate on behalf of all workers, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members. Having noted that section 131 of the Act provides that an employer may, if he or she wishes, organize a secret ballot to establish a sole bargaining agent, the Committee recalled that the determination of the representative status of organizations for the purposes of bargaining should be carried out in accordance with a procedure that offers every guarantee of impartiality, by an independent body that enjoys the confidence of the parties (see the 2012 General Survey on the fundamental Conventions, paragraph 228). On this basis, in its previous comments, the Committee underlined that the organization of a ballot for determining representativeness should be carried out by the authorities or an independent party upon a request presented by a union. The Committee therefore requested the

Government to provide information on any developments in bringing the legislation into conformity with the Convention. The Committee takes note of the Government's indication that the review of the Labour Act is still ongoing and that this matter would be put before the stakeholders for consideration to be incorporated in the new Bill. ***Welcoming the Government's indication, the Committee requests the Government to provide information on the progress achieved in this respect.***

*Promotion of collective bargaining in practice.* ***While taking note of the information provided by the Government on two company-level collective agreements concluded in the private sector in 2014 and 2017, the Committee requests the Government to inform on the measures taken to promote collective bargaining in all sectors covered by the Convention and to provide information on the number of collective agreements concluded and in force in the country, the sectors concerned and the number of workers covered by these agreements.***

## Guatemala

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

The Committee takes note of the supplementary information provided by the Government in the light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and from the social partners this year, as well as the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 and on 16 September 2020. The Committee also notes the joint observations submitted by the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala on 16 October 2020. The Committee takes note of the Government's replies to these observations which refer to matters examined in the present comment and to complaints of violations of the Convention in practice.

The Committee also notes the observations of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), supported by the International Organisation of Employers (IOE), received on 1 September 2019, also referring to matters examined by the Committee in the present comment.

*COVID-19 pandemic and application of the Convention.* The Committee notes that the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala allege that: (i) as a result of the prohibition of public meetings due to the health emergency, a number of trade union organizations are without leadership, as the time-limit for the holding of their executive committees has elapsed; (ii) accordingly, they have repeatedly requested the Ministry of Labour to issue a Ministerial Order extending the period of the executive committees beyond their expiry date to the end of the crisis; (iii) in the absence of action by the Government, the confederations sent the Minister of Labour a draft Ministerial Order, proposing that the Ministry availed itself of the Office's assistance; (iv) on 1 October 2020, at the end of the state of emergency, when it became again possible to hold public meetings, they asked the Ministry of Labour for guidance for the trade unions that were without leadership, but obtained no reply; and (v) the limbo created by Government inaction rendered the workers and their organizations defenceless, in a context characterised by many anti-union acts. ***Emphasizing that distancing measures following the pandemic should not affect the capacity of trade unions to represent their members and noting that the Government does not refer to this issue in its comments on the observations of the national trade union confederations, the Commission requests the Government to enter into a dialogue with the trade unions concerned as soon as possible in order to resolve the difficulties raised. The Committee requests the Government to provide its comments on these matters.***

#### *Follow-up to the decision adopted by the Governing Body at its 334th Session concerning the closure of the complaint submitted under article 26 of the ILO Constitution alleging non-observance of the Convention*

The Committee notes the discussions which took place during the 340th Session (October–November 2020) of the Governing Body concerning additional measures taken to ensure a sustained and comprehensive implementation of the road map adopted in 2013 as part of the follow-up to the complaint submitted in 2012 under article 26 of the ILO Constitution alleging non-observance of the Convention.

The Committee notes that the Governing Body: (i) welcomed the ILO technical cooperation programme "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" and called for funding for its implementation; and (ii) requested the Office to report annually on its implementation at its October–November sessions for the duration of the three-year programme.

*Trade union rights and civil liberties*

The Committee notes with ***regret*** that since 2005 it has been examining, in the same way as the Committee on Freedom of Association, allegations of serious acts of violence against trade union leaders and members, including numerous murders, and the related situation of impunity. The Committee notes in this regard: (i) the information provided by the Government in its reports from 2019 and 2020 on the application of the Convention; and (ii) the information contained in the reports presented to the Governing Body in September 2019 by the Government, on the one hand, and by the Guatemalan Autonomous Trade Union and People's Movement and the Global Unions of Guatemala, on the other. The Committee further notes, from the Government's supplementary report of 2020, that the Government submits the document, formulated in a tripartite manner by the National Tripartite Committee on Labour Affairs and Freedom of Association (hereinunder the National Tripartite Committee), which was communicated to the Governing Body in September 2020, and which sets out the position of each of the tripartite constituents vis-à-vis the state of application of the 2013 road map.

The Committee also notes that the Committee on Freedom of Association, at its meeting in October 2019, examined Case No. 2609, which groups together the complaints of acts of anti-union violence, including 90 murders of members of the trade union movement recorded between 2004 and 2018 (see 391st Report, October 2019, Case No. 2609, paragraphs 270–302).

The Committee notes that the Government provides information on the institutional initiatives taken to counter anti-union violence. The Committee notes that the Government indicates specifically that: (i) with the aim of reducing the backlog and providing prompt and effective justice, in 2019 the Public Prosecutor established a unit for the investigation of crimes against judicial officials and trade unionists; (ii) the unit has a directors' office, a unit for crimes against judicial officials and a unit for crimes against trade unionists, and had at its disposal for the 2020 financial year a budget of Q4,918,412.00 (approximately US$618,500); (iii) with a view to preventing delay in the handling of cases, the Office of the Public Prosecutor has introduced an integrated case management system; (iv) the National Tripartite Committee held a meeting in February 2020 with the Chief Public Prosecutor during which, on the basis of the recommendations of the Committee on Freedom of Association, the Prosecutor was presented with a request to expedite investigations into 35 murder cases; (v) on 6 August 2020, the Government and the social partners approved the technical cooperation programme prepared by the Office and the action to be taken to strengthen the State's response to anti-union violence; and (vi) the National Tripartite Committee's plan of work for 2020-2021 provides for high level meetings with the Supreme Court, the Public Prosecutor and the Ministry of the Interior to seek solutions to the anti-union violence. The Committee further notes that, during the discussion at the 340th Session of the Governing Body, the Government referred to a joint statement of 22 October 2020 by the Ministry of Labour, the Ministry of the Interior and the Public Prosecutor's Office on anti-union violence, in which the above-mentioned institutions committed themselves to : (i) agile inter-institutional coordination to guarantee the fundamental rights of trade union leaders and trade unionists; (ii) to seek to increase and strengthen institutional capacities to achieve this objective; and (iii) to energise the spaces for dialogue with representatives of labour rights defenders and with the National Tripartite Commission.

The Committee also notes the updated data provided by the Government regarding investigations into the 90 murders of trade unionists, according to which: (i) 24 judgments have been delivered (19 convictions and 5 acquittals), and one security and corrective measure; (ii) two cases are currently at the public oral hearing stage; (iii) arrest warrants have been issued in seven cases; (iv) six cases have been dismissed, and (v) during the course of 2020, progress has been made with respect to investigations into 13 murders. The Government also states that the investigations led by the Public Prosecutor's Office are currently subject to the preventive measures adopted to address the COVID-19 pandemic.

The Committee further notes from the Government's report that between 1 January 2019 and July 2020, 109 requests for protection measures were received for members of the trade union movement and that, with respect to those: (i) 86 perimeter security measures have been established for a period of six months, three personal security measures for the same length of time, and 12 measures consisting of providing a telephone number, in view of the low level of risk identified; and (ii) eight requests remain pending; and (iii) a total of 5 members of the trade union movement now have personal security measures in place, as compared to two in 2019.

The Committee also notes from the CACIF's contribution to the National Tripartite Committee's document that the CACIF: (i) refers to the growing difficulty of clarifying events that occurred many years earlier; proposes concentrating the investigation on cases where it is possible to establish the facts and convict the perpetrators; and (iii) states that preventive and protective actions in respect of freedom of association should be reviewed by the National Tripartite Committee to assess the appropriateness of amending one or more or its components.

The Committee further notes from the ITUC's observations from 2019 and 2020 that it reports: (i) the murder in November 2018 of the leader of the Union of Secondary-Level Distance Education Workers of Santa Rosa; (ii) the murders of six trade union leaders between 2 February and 2 June 2020: and (iii) a

number of attempted murders and threats against prominent national and local trade union leaders. The Committee also notes that the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, at the same time as alleging regression in the Ministry of the Interior's protection policy, report the murders of 12 trade union leaders and members between 1 January and 22 September 2020, as well as three attempted murders. The Committee notes the statement by the trade union confederations that a total of more than 100 trade union members have now been murdered. The Committee notes with ***deep concern*** these and other reports of numerous acts of anti-union violence and especially the growing number of murders reported over the past year. The Committee recalls once more in this regard that trade union rights can only be exercised in a climate free of violence, pressure or threats of any kind against trade unionists, and it is incumbent on governments to guarantee respect for this principle.

In that regard, in light of the information provided by the Government and the social partners, the Committee observes that: (i) although three additional convictions of perpetrators of murders committed in 2017 and 2018 were handed down between July 2019 and September 2020, the vast majority of the numerous reported murders of members of the trade union movement remain unpunished; and (ii) although the number of members of the trade union movement accorded protection measures has increased from 2 to 5 in the past year, such measures remain very infrequent in view of the high recorded numbers of murders and other acts of anti-union violence against members of the trade union movement.

In view of the above, while duly noting the action still being taken by the Government, the results reported and the difficulty involved in resolving the oldest murder cases, the Committee can only express its ***deep concern*** at the persistence of a high level of impunity, and at the growing number of murders of members of the trade union movement reported last year. ***The Committee therefore once again urges the Government to continue to take and to intensify, as a matter of urgency, all necessary and time-bound measures: (i) to investigate all acts of violence against trade union leaders and members with a view to promptly determining responsibilities and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigations; and (ii) to provide prompt and effective protection for all trade union leaders and members who are at risk. With regard to the specific action required to achieve those objectives, the Committee refers to the recommendations made by the Committee on Freedom of Association in the context of Case No. 2609.***

## Legislative issues

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

- section 215(c) of the Labour Code, which requires a membership of "50 per cent plus one" of the workers in the sector to establish a sector trade union (in its previous comment, the Committee noted with concern the trade unions' indication that the combination of the impossibility of establishing sector trade unions under the requirements of section 215(c) and the impossibility in small enterprises, which account for almost all Guatemalan companies, to meet the Labour Code requirement of 20 workers for the establishment of a trade union, meant that most of the country's workers were unable to exercise the right to join a trade union);
- sections 220 and 223 of the Labour Code, which establish the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity to be eligible for election as a trade union leader;
- section 241 of the Labour Code, under the terms of which, in order to be lawful, strikes have to be called by a majority of the workers and not by a majority of those casting votes;
- section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996, which provides for the possibility of imposing compulsory arbitration in non-essential services and establishes other obstacles to the right to strike; and
- sections 390(2) and 430 of the Penal Code and Decree No. 71-86, which establish labour, civil and criminal penalties in the event of a strike by public officials or workers in certain enterprises.

The Committee also recalls that for many years it has been asking the Government to take measures to ensure that various categories of public sector workers (hired under item 029 and other items of the budget) enjoy the guarantees afforded by the Convention.

In its comment adopted in 2018, the Committee noted with interest the tripartite agreements concluded in February and August 2018 relating to various aspects of the reforms needed to bring the legislation into line with the Convention. The Committee expressed the hope that, on the basis of the above, the Government would soon be in a position to report the adoption, requested for many years, of legislation which fully complies with the obligations contained in the Convention.

The Committee notes that the Government recalls that: (i) it previously submitted Bill No. 5199 with the purpose of bringing the legislation into line with the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); and (ii) it asked the President of the National Congress Working Committee to defer the discussion in plenary of the Congress of Bill No. 5199 in order to facilitate

a tripartite consensus on the above-mentioned reforms; consequently, since August 2017, the National Congress has been awaiting the consensus of the social partners. The Committee notes that the Government, in its supplementary report, also refers to: (i) the important legislative approach of the technical cooperation programme prepared by the Office and supported by the country's tripartite constituents; and (ii) the support currently provided by a consultant hired by the ILO to the National Tripartite Committee by means of a study to update the Guatemalan labour legislation in the perspective of the reforms requested by this Committee in relation to the present Convention, which will lead to meetings with the tripartite constituents in November 2020.

The Committee notes that the CACIF reiterates its commitment to the implementation of the road map and its legislative reform component. While supporting the stance adopted by the Employers' group in the various ILO bodies, maintaining that the right to strike is neither contained in nor derived from any ILO Convention, the CACIF indicates its continued willingness to work on a tripartite basis to adopt a reform proposal that satisfies national interests in the matter.

The Committee also notes that the Guatemalan Autonomous Trade Union and People's Movement and the Global Unions of Guatemala state that in the last two years no progress has been made on the legal reforms contained in the road map and specifically that: (i) the initiatives put forward in the National Tripartite Committee, including by ILO officials, were met with lack of interest on the part of the employers and the Government; and (ii) as a result, it is still not accepted that individuals have the right to organize in sector or industry trade unions, or that foreign citizens have the right to freedom of association or that the persons directly concerned can take the decision to go on strike.



While noting the continued technical assistance of the Office, the Committee notes with ***regret*** that it can be seen from the above-mentioned elements that since 2018 no real progress has been made on the drafting or adoption of legislation that would bring the existing laws into line with the Convention. ***Emphasizing the importance of the tripartite agreements reached in 2018, the need to finally resolve the major discrepancies identified for decades between the legislation and the Convention, and the Government's ultimate responsibility for the application of the Convention, the Committee trusts that, with the support of the Office through the technical cooperation programme, the tripartite constituents will conclude the dialogue initiated in 2018 on the issues still pending in the very near future. The Committee urges the Government to take the necessary steps, taking the outcome of the above-mentioned dialogue into consideration, to adopt legislation that fully complies with the Convention. The Committee firmly expects that the Government's next report will contain indications of major progress.***

### Application of the Convention in practice

*Registration of trade unions.* In its previous comments, having made special note of the registration of trade unions, the Committee asked the Government to intensify the dialogue with the trade unions on revising and accelerating the trade union registration procedure. The Committee notes the Government's indication that, further to the recommendations made by the Committee on Freedom of Association in October 2015 in the context of Case No. 3042, there are no obstacles to the free registration of trade union organizations. Specifically, the Government states that: (i) from the total of 36 applications for registration received in 2018, 34 trade unions were registered; (ii) between 1 August 2019 and 31 August 2020, 47 trade union organizations were registered in the Public Trade Union Register, while registration applications from 34 trade union organizations were refused or shelved on the basis of legal requirements, and 60 trade union organizations had to fulfil preconditions to be able to pursue the registration procedure; (iii) the Ministry of Labour prepared and disseminated a "trade union information pack", after presenting this "pack" at a tripartite meeting in December 2018, in order to provide effective information to workers who wish to establish a trade union; (iv) in May 2019, an invitation was issued to the workers' sector to participate in talks on the process of establishing trade unions; and (v) the technical cooperation programme prepared by the Office envisages measures to simplify procedures and reduce requirements for registration of trade unions.

The Committee also notes, however, that the Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala state that: (i) Guatemala remains the Latin American country with the lowest rate of trade union membership (1.5 per cent); (ii) according to the figures supplied by the Government itself in its report to the Governing Body, there has been a significant decrease in new trade union registrations in 2018 and 2019 compared with previous years; (iii) a substantial proportion of trade union organizations that applied for registration between August 2019 and August 2020 were not registered by the labour administration; and (iv) the figures supplied by the Government demonstrate that the labour administration is going too far in its practice of insisting on amendments to trade union constitutions as a precondition to registration and continues to impose registration requirements which are complex and legally dubious. ***Noting the latest figures regarding the registration of trade unions and the divergent views of the Government and the trade unions in this regard, the Committee encourages the Government and the trade unions to take major steps forward in their dialogue on accelerating the process of trade union registration. Underlining the opportunity that the technical cooperation***

***programme prepared by the Office presents, the Committee requests the Government to provide information on all progress made in this respect.***

*Settlement of disputes relating to freedom of association and collective bargaining.* With regard to the functioning of the Mediation and Dispute Settlement Subcommittee of the National Tripartite Committee, the Committee refers to its observations on the application of Convention No. 98.

*Awareness-raising campaign on freedom of association and collective bargaining.* In its previous comments, after noting a series of initiatives that had been taken or envisaged, the Committee urged the Government, in collaboration with the social partners, to ensure that the awareness-raising campaign on freedom of association and collective bargaining, provided for in the 2013 road map, was given real visibility in the national mass media. The Committee notes the Government's observation that the technical cooperation programme prepared by the Office and approved by the national tripartite constituents envisages the "approval, dissemination and implementation of a campaign to promote collective bargaining". The Committee also notes that the Guatemalan trade union federations claim that no progress has been made in the implementation of awareness-raising and dissemination campaigns relating to freedom of association.

The Committee notes with ***regret*** that since its last comment no significant progress has been made in the implementation of the awareness-raising campaign on freedom of association and collective bargaining. ***Emphasizing the major contribution that the National Tripartite Committee and its tripartite members should make in this respect and the responsibility that ultimately lies with the Government for ensuring that the commitments made in the road map are effectively implemented, the Committee once again urges the Government to take the necessary steps, with the support of the social partners and of the technical cooperation programme prepared by the Office, to ensure that the awareness-raising campaign on freedom of association and collective bargaining is given real visibility in the national mass media.***

***Observing the absence of significant progress in the past two years, the Committee urges the Government, in collaboration with the National Tripartite Committee and the support of the technical cooperation programme prepared by the Office to take all the necessary measures to remedy in the very near future the serious violations of the Convention noted for many years by the Committee.***

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee updated the 2019 examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 and 16 September 2020, as well as the joint observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala received on 16 October 2020.

The Committee also notes the observations of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), received on 1 September 2019, referring to matters examined by the Committee in the present comment.

Lastly, the Committee notes the Government's replies to the different observations made by the ITUC and the national trade union federations, which included among others, allegations of anti-union discrimination and obstruction of collective bargaining in both the public and private sectors. These replies were taken into consideration by the Committee in its examination of the various issues raised in the present comment.

*COVID-19 pandemic and application of the Convention.* The Committee notes that the national trade union federations allege that, as a result of the COVID-19 pandemic, both the Ministry of Labour premises and the national labour courts were shut down, leaving workers completely unprotected to file complaints for violations of fundamental labour rights. ***While acknowledging the great challenges posed by the pandemic, the Committee requests the Government to provide its comments on the matter.***

In its 2019 comments, the Committee had noted the closure by the Governing Body of the complaint made in 2012 under Article 26 of the ILO Constitution, concerning non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee recalls that in the follow-up to the above-mentioned complaint and in the road map adopted by the Government in 2013 in the context of the complaint, several issues had been raised with regard to the implementation of this Convention.

The Committee takes note of the discussions that took place during the 340th Session of the Governing Council (October-November 2020) concerning the additional measures taken to achieve a sustainable and comprehensive implementation of the afore-mentioned road map.

The Committee notes that the Governing Body (i) welcomed the technical cooperation project "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" (hereinafter the technical cooperation program) and requested that its implementation be funded, and (ii) requested the Office to present an annual report on the implementation of the project at its October-November meetings, during the projected three-year project duration.

*Article 1 of the Convention. Protection against anti-union discrimination. Activities of the labour inspectorate.* In its previous comments, the Committee noted with satisfaction that Legislative Decree No. 7/2017 had restored the power of the labour inspectorate to impose penalties and asked the Government to provide information on the impact of the new Legislative Decree regarding protection against acts of anti-union discrimination.

The Committee notes that the Government, in its 2019 report and its 2020 supplementary information, indicates that: (i) between January 2018 and April 2019, the total number of penalties notified by the labour inspectorate was 1,233, and between January 2018 and 10 August 2020, 783 fines were paid by the infringing companies; (ii) in this early phase of implementation of Decree No. 7/2017, it is not yet possible to disaggregate and isolate information on the penalties applied for violations of trade union rights and of collective bargaining; (iii) however, the Labour Inspectorate (IGT) is developing an electronic system in order to have disaggregated information on, inter alia, the reasons for the penalties and the action taken to comply with them, and the IGT gives a firm undertaking in this respect to provide the requested information in the very near future; (iv) nevertheless, the IGT was able to report that between 2017 and April 2019 it handled 1,179 complaints from trade unions, including, in particular, 333 allegations of reprisals against trade union leaders; and for the entire year 2019, a total of 539 complaints related to acts that could be classified as anti-union discrimination were received at the national level, and they are being addressed; and (v) the Government has initiated the procedures to adopt the Ministerial Agreement that will render operational the IGT Tripartite Advisory Council. The latter being the appropriate forum for the IGT and the social partners to exchange views on improving the implementation of Decree No. 7/2017.

The Committee welcomes the efforts to develop a comprehensive information system that enables follow-up action to be taken in relation to penalties imposed in matters concerning freedom of association and collective bargaining hopes that the IGT Tripartite Advisory Council will start its activities without further delay. While recalling its previous comments on the content of Legislative Decree No. 7/2017 in the context of monitoring the application of the Labour Inspection Convention, 1947 (No. 81), the Committee once again underlines the vital importance of labour inspection in achieving adequate protection against acts of anti-union discrimination, especially in a context of numerous complaints on this matter. ***In view of the above, the Committee requests the Government to reinforce the measures taken to ensure that infringements of trade union rights and collective bargaining are given priority treatment by the Labour Inspectorate and to ensure that an effective system of information on the follow-up given to inspections in this regard is established. The Committee requests the Government to provide detailed information in this respect, including the statistics requested in its previous comment. The Committee recalls that the Government may avail itself of the technical assistance of the Office, especially in the context of the start of the technical cooperation program developed by the latter.***

*Effective judicial proceedings.* In its previous comments, the Committee expressed concern at the many complaints alleging the persistent slowness of judicial procedures in relation to anti-union discrimination and the high level of non-compliance with reinstatement orders. While welcoming the initiative to adopt a reform of the judicial labour proceedings, the Committee emphasized the need for this initiative to include as one of its priorities the adoption of effective judicial procedural rules to ensure that all cases of anti-union discrimination are examined by the courts in summary proceedings and that the respective court rulings are implemented rapidly. The Committee notes in this regard that the Government provides updated data on the procedural status of relocation proceedings, according to which, between 1 January 2019 and 7 September 2020: (i) the country's labour courts received 6257 reinstatement complaints (6123 for the public sector and 134 for the private sector); (ii) of the 6257 requests for reinstatement, 1794 have already resulted in a judicial decision, 148 were dismissed or resulted in a withdrawal and 4315 are ongoing; (iii) of 1501 reinstatement rulings ordered during that period, 385 were executed, 918 resulted in an objection by the employer and 198 were not possible for practical reasons (incorrect address and so on); (iv) during the same period, 1390 appeals were lodged in respect of the reinstatements (1323 in relation to the public sector and 67 to the private sector); (v) the Public Ministry issued 344 certified reports in respect of the reinstatement proceedings (343 for the public sector and one for the private sector); and (vi) 55 per cent of the amparo proceedings examined by the Supreme Court of Justice relate to labour issues. The Committee further notes the Government's indication that Bill No. 5809 submitted by the Supreme Court of Justice, which provides for the approval of the Labour and Social Security Procedural Code, is about to be presented in plenary session to the Congress of the Republic. This code will allow for agile and effective judicial proceedings in labour-related matters. The Committee finally notes that the Government indicates that the Subcommittee, in compliance with the

road map of the National Tripartite Committee, is examining the failure of two municipalities and two other public institutions to comply with reinstatement orders as a matter of priority.

In the light of the above, the Committee observes that: (i) the general statistics supplied by the Government on the judicial processing of reinstatement requests in the context of collective disputes continue to show a substantial accumulation of cases pending before the labour courts and before the Public Prosecutor's Office and a very high level of non-compliance with judicial reinstatement orders; (ii) the ITUC and the national trade union federations continue to denounce the lack of progress on judicial protection against anti-union discrimination acts; (iii) CACIF emphasizes that, according to the data supplied by the judiciary, the public sector is where most reinstatements are requested; and (iv) even though the draft reform of the judicial procedural rules on labour matters prepared by the Supreme Court, is intended to expedite labour judicial proceedings in general, it does not appear from the information provided, that the project contains specific provisions aimed at ensuring the summary and effective resolution of cases of anti-union discrimination.

The Committee notes with ***concern*** that the details provided above reveal a lack of progress regarding the judicial response to the cases of anti-union dismissals, an issue which has been raised in its comments on the application of the Convention by Guatemala since 2001. In this regard, the Committee emphasizes that: (i) anti-union discrimination represents one of the most serious violations of freedom of association, since it can endanger the very existence of trade unions; (ii) the persistent failure to comply with a high proportion of reinstatement orders in cases of anti-union dismissals has been highlighted in the recent Governing Body discussions on the application of the road map adopted in 2013; and (iii) in two recent cases, the Committee on Freedom of Association once again urged the Government, in consultation with the social partners, to carry out a thorough review of the procedural rules of the relevant labour regulations in order to ensure that the judiciary provides appropriate and effective protection in cases of anti-union discrimination (see 392nd Report, October 2020, Case No. 2869, paragraph 633 and 386th Report, June 2018, Case No. 3188, paragraph 340).

***In view of the above, the Committee urges once again the Government to address as a matter of priority the need to provide an effective judicial response to the cases of anti-union discrimination. The Committee especially urges the Government: (i) to take measures as soon as possible, in coordination with all the competent authorities, to overcome the obstacles to effective compliance with the reinstatement orders handed down by the courts; and (ii) to take the necessary steps to ensure that, in consultation with the social partners, new procedural rules are adopted so that all cases of anti-union discrimination are examined by the courts in summary proceedings and the respective court rulings are implemented rapidly. The Committee requests the Government to provide information in this respect.***

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee noted with growing concern the low and ever-decreasing number of collective agreements that had been signed and approved. The Committee therefore asked the Government to make use of the new National Tripartite Committee on Industrial Relations and Freedom of Association to examine with the social partners the obstacles, both legislative and practical, to the effective promotion of collective bargaining with a view to taking measures to foster collective bargaining at all levels.

The Committee notes the information provided by the Government indicating that approval was given to: (i) 17 collective agreements in 2017 (11 in the public sector, six in the private sector); (ii) 14 collective agreements in 2018 (six in the public sector, eight in the private sector); (iii) 12 collective agreements between 1 January and 18 September 2019 (eight in the public sector and four in the private sector); and (iv) six collective agreements between August 2019 and 31 August 2020. The Committee takes note in this regard of the allegations of the ITUC and the national trade union federations, based on the statistics provided by the Government, that there is a serious decline in collective bargaining in the country.

The Committee notes with ***concern*** that the already extremely low number of collective agreements agreed and approved continues to decline, also recalling that, to date, collective agreement are negotiated and concluded on a decentralized basis, at the level of enterprises and public institutions, which suggests, in the absence of statistics in this respect, extremely low coverage in terms of collective bargaining in the country. The Committee also recalls that, in its 2018 comment, it noted with interest that the tripartite agreement concluded by the national constituents in November 2017 identified, among the objectives of the legislative reform due to be submitted to the Congress of the Republic, the mechanisms and requirements applicable to sectoral collective bargaining. In this regard, the Committee notes the Government's 2019 indication that, in the context of the discussions on the legislative reforms contemplated in the road map of 2013 and the agreement of 2017, the national constituents agreed in August 2018 on a set of principles on which the future legislation should be based, principles that include the right to collective bargaining of industry trade unions. While noting the absence of concrete progress on the development of legislative instruments based on the principles agreed upon in 2018, the Committee notes that the Government indicates in its supplementary information that: (i) the technical cooperation project developed by the Office contains activities relating to the promotion of collective

bargaining; and (ii) a consultant hired by the ILO is providing support to the National Tripartite Committee by carrying out a study to update Guatemalan labour legislation in the light of the reforms requested by this Committee, assistance which would lead to meetings with the tripartite constituents in November 2020.

***The Committee requests the Government to make use, with the support of the technical cooperation program developed by the Office, of the National Tripartite Committee on Industrial Relations and Freedom of Association to examine with the social partners the obstacles, both legislative and practical, to the effective promotion of collective bargaining so that it is able to take measures to promote collective bargaining at all levels. In this regard, the Committee expresses the firm hope that the agreement of August 2018 concerning the principles on which the reform of the labour legislation should be based will soon be reflected in the adoption of legislation in the very near future. The Committee requests the Government to provide information in that regard.***

*Articles 4 and 6. Promotion of collective bargaining in the public sector.* In its previous comments, noting the observations of the ITUC and various national trade union federations and recalling that Guatemala has ratified the Collective Bargaining Convention, 1981 (No. 154), which covers the public sector, the Committee asked the Government to take steps to facilitate the process of the approval of collective agreements in the public sector and ensure that any refusal to approve a collective agreement was on grounds compatible with the Convention. The Committee also asked the Government to send its comments on the trade union observations denouncing the prohibition on wage negotiation in the public sector and the legal proceedings instituted by the Public Prosecutor's Office against 14 collective agreements. Lastly, the Committee asked the Government to take the necessary steps, in consultation with the trade union organizations concerned, to ensure that collective bargaining in the public sector takes place in a clear and balanced regulatory framework.

With regard to the approval of public sector collective agreements and the possibility of negotiating wages in the public administration, the Committee notes the 2019 Government's indications that: (i) section 96 of the Act on the general budget (revenue and expenditure) of the State for the 2019 financial year and section 19 of the "Annual plan of wages and regulations for the Administration" (Government Order No. 245-2018) recognize the possibility of pay negotiations in government entities, taking account of the financial conditions of the State, such information being provided by the Ministry of Finance; (ii) the Ministry of Labour issued a circular dated 25 January 2019 to expedite the process of approval of collective agreements; (iii) in late 2018, the Ministry of Labour submitted to the National Tripartite Committee a draft government order for the purpose of establishing the formal requirements for approval of collective agreements in the public administration; tripartite consolidation of the text is pending; and (iv) the collective agreement on conditions of work of the Education Workers' Union of Guatemala has already been approved and is now in force. The Committee notes that, in the additional information provided in 2020, the Government informs that, in addition to the six collective agreements approved between August 2019 to August 2020, 15 additional applications for approval were requested in the same period, the labour administration is examining 14, and a file has been returned to the applicants for completion. In this regard, the Committee also notes the recurrent allegations by the national trade union federations according to which the labour administration would have used the approval process to hinder collective bargaining in the public sector. ***Stressing the importance of strengthening the regulatory framework applicable to the approval of collective bargaining agreements in the public sector, the Committee notes with concern the very long periods to which public sector collective bargaining agreements are still subject before approval. The Committee requests the Government to, in consultation with the representative trade union organizations of the sector, identify appropriate measures to remedy this situation and to report on any progress in this regard.***

With regard to the claims of the trade union organizations concerning investigations and legal proceedings launched by the Public Prosecutor's Office against a number of collective agreements in the public sector, the Committee notes the Government's statement that the Public Prosecutor's Office does not systematically challenge the benefits granted through collective bargaining but seeks to ensure that the principle of legality prevails in the exercise of the right to collective bargaining. The Committee once again considers that a practice whereby the authorities almost systematically challenge the benefits awarded to public sector workers on the basis of considerations related to "rationality" or "proportionality" with a view to their cancellation (by reason, for example, of their cost deemed to be excessive) would seriously jeopardize the very institution of collective bargaining and weaken its role in the settlement of collective disputes. However, if the collective agreement contains provisions that are contrary to fundamental rights (e.g. non-discrimination), the judicial authority could nullify these provisions so as to ensure respect of higher standards (see the 2012 General Survey on the fundamental Conventions, paragraph 207). ***The Committee therefore once again requests the Government to take all possible steps to promote the negotiated, consensual settlement of any disputes that arise regarding the supposedly excessive nature of certain clauses in collective agreements in the public sector.***

*Application of the Convention in practice. Maquila sector.* In previous comments, having noted with concern that the unionization rate in the sector was below 1 per cent and that the approval of only one collective agreement covering a *maquila* (export processing) enterprise was known in recent years, the Committee asked the Government to examine with the social partners, in the new National Tripartite Committee on Industrial Relations and Freedom of Association, the obstacles to the exercise of trade union rights and collective bargaining in the *maquila* sector and to intensify initiatives for the effective promotion of these rights in the sector. The Committee notes that in its complementary information, the Government states that from 2013 to 16 March 2020, five registered unions were counted in this sector. ***In the absence of additional information, the Committee is bound to repeat its previous requests and hopes that the Government will provide information on specific initiatives to promote collective bargaining in the maquila sector in its next report.***

*Application of the Convention in municipal authorities.* In its comment published in 2018, in view of the large number of allegations of violations of the Convention at the municipal level, the Committee urged the Government to take all the necessary measures to ensure compliance with the Convention in municipalities. The Committee notes the Government's indication that, in the context of the entry into office of the new municipal authorities resulting from the municipal elections of June 2019, the Ministry of Labour had submitted to the National Tripartite Committee a proposal for a statement concerning the need to avoid anti-union dismissals in municipal authorities. The Ministry is still awaiting comments on this matter from the worker members of the National Tripartite Committee.

The Committee also notes the Government's detailed replies to the observations of the ITUC, the Guatemalan Autonomous Trade Union and People's Movement and the Global Unions of Guatemala concerning specific situations within municipalities. The Committee notes with ***concern*** that the information supplied shows that both labour inspections and court decisions are often insufficient to resolve situations involving violations of the Convention, especially in relation to cases of anti-union dismissals of municipal workers.

***Underlining the need for effective mechanisms to ensure that municipal authorities comply with the rule of law and that an exhaustive analysis is carried out of the reasons for the high degree of conflict in this sector, the Committee urges the Government to take all the necessary measures, including the adoption of legislation if necessary, to ensure the application of the Convention in the municipal authorities. The Committee requests the Government to provide information on progress made in this respect.***

*Tripartite dispute settlement in relation to freedom of association and collective bargaining.* In its comment on the present Convention, published in 2018, the Committee noted with interest that the tripartite agreement signed on 2 November 2017 provided that the new National Tripartite Committee on Industrial Relations and Freedom of Association will incorporate the functions of the tripartite Dispute Settlement Committee, established in 2016 for the purpose of resolving disputes concerning freedom of association and collective bargaining by means of voluntary conciliation. In the above comment, and in its comment on the application of the Labour Inspection Convention, 1947 (No. 81), published in 2019, the Committee, noting the large number of disputes referred to the ILO, encouraged the Government and the social partners to devote the necessary efforts to ensure that the new Dispute Settlement Subcommittee can contribute very quickly to a better application of the Conventions on freedom of association and collective bargaining ratified by Guatemala.

The Committee notes the Government's indication that the Subcommittee began to function effectively and that a direct agreement was reached between the Ministry of Environment and Natural Resources and the unions of the mentioned Ministry. The Committee also notes that the national trade union federations, for their part, claim that the Subcommittee does not function because of a lack of tripartite spirit and the unwillingness of the employers who were invited to the Subcommittee. The federations allege that the agreement referred to by the Government was reached outside the Subcommittee and that it was breached by the employer, leading to the outbreak of the collective conflict.

***Stressing the important role that the Dispute Settlement Subcommittee can play in a context of numerous allegations of anti-union discrimination and noting that the technical cooperation programme developed by the Office provides for its strengthening, the Committee hopes that the Government will be able to report on the progress made in its activities.***

***Noting the lack of significant progress the Committee urges the Government to take all necessary steps, with the participation of the National Tripartite Committee and with the support of the technical assistance program developed by the Office, to remedy as soon as possible the serious violations of the Convention that the Committee has been raising for many years.***

## Guyana

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

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

*Collective bargaining in practice.* ***The Committee requests the Government to provide information on the measures taken, in conformity with Article 4 of the Convention, to promote collective bargaining as well as to provide information on the number of collective agreements concluded and in force in the country, indicating the sectors concerned and the number of workers covered.***

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

## Haiti

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

The Committee takes note of the observations on the application of the Convention in practice submitted by the International Trade Union Confederation (ITUC) on 24 September 2020, which include allegations of violations of the right to organize in export processing zones. The Committee also takes note of the comments of Education International received on 1 October 2020, which denounce a challenge to the right of organizations to freely carry out their activities in the education sector. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 1 September 2019, on matters covered by the present comment, as well as allegations of violations of trade union rights in practice. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes the Government's communication received on 30 October 2018 in which it informs the Committee that, further to the conclusions of the Conference Committee, it has requested ILO technical assistance with a view to helping in the presentation of the reports due, strengthening the inspection services, consolidating social dialogue for the continuation of social reforms, and addressing the other points raised by the Conference Committee. The Government adds that it hopes to receive the requested assistance before the next session of the International Labour Conference. The Committee hopes that this technical assistance will be provided without delay.

The Committee notes the observations of the Association of Haitian Industries (ADIH) received on 31 August 2018. It also notes the observations of the Confederation of Public and Private Sector Workers (CTSP) and the International Trade Union Confederation (ITUC), received on 1 September 2018, as well as the observations of the Trade Union Federation of Haiti (CSH), received on 29 August 2018, which relate to the application of the principles of freedom of association in practice.

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

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

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

– the need to amend sections 229 and 233 of the Labour Code in order to ensure that minors who have reached the statutory minimum age for admission to employment are allowed to exercise their trade union rights without parental authorization;

– the need to amend section 239 of the Labour Code so as to allow foreign workers to serve as trade union officials, at least after a reasonable period of residence in the country;
– the need to guarantee for domestic workers the rights laid down in the Convention (section 257 of the Labour Code provides that domestic work is not governed by the Labour Code, and the Act adopted by Parliament in 2009 to amend this provision – the Act has not yet been adopted, but the Government referred to it in its previous reports – also does not recognize the trade union rights of domestic workers).

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

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

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

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

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

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

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) dated 24 September 2020, as well as those of Education International dated 1 October 2020. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 1 September 2019, on matters covered by the present comment, as well as allegations of violation of the Convention in practice. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes the Government's communication received on 30 October 2018 in which it informs the Committee that, further to the conclusions of the Conference Committee, it has requested ILO technical assistance with a view to helping in the presentation of the reports due, strengthening the inspection services, consolidating social dialogue for the continuation of social reforms, and addressing the other points raised by the Conference Committee. The Government adds that it hopes to receive the requested assistance before the next session of the International Labour Conference. The Committee hopes that this technical assistance will be provided without delay.

The Committee notes the observations of: (i) the International Trade Union Confederation (ITUC) received on 1 September 2018 denouncing the absence of collective bargaining in the country as a result of the alleged opposition from employers; (ii) the Confederation of Public and Private Sector Workers (CTSP) received on 29 August 2018 and related to elements examined by the Committee in its previous comment; and (iii) the Trade Union Federation of Haiti (CSH), received on 1 September 2018 alleging acts of anti-union discrimination. ***The Committee requests the Government to provide its comments thereon.***

The Committee finally notes the observations from the Association of Haitian Industries (ADIH) received on 31 August 2018.

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

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* The Committee recalls that its previous comments concerned the need to adopt a specific provision establishing protection against anti-union discrimination in recruitment practices, and the need to adopt provisions generally affording adequate protection to workers against acts of anti-union discrimination (on the basis of trade union membership or activities) during employment, accompanied by effective and rapid procedures and sufficiently dissuasive sanctions. In this regard, the Committee recalls that, in accordance with section 251 of the Labour Code, "any employer who, in order to prevent an employee from joining a trade union, organizing a trade union

or exercising his or her rights as a trade union member, dismisses, suspends or demotes the employee or reduces his or her wages, shall be liable to a fine of 1,000 to 3,000 Haitian gourdes (approximately US$15–45) to be imposed by the labour tribunal, without prejudice to any compensation to which the employee concerned shall be entitled". ***The Committee requests the Government to ensure that, in the context of the renewal of tripartite dialogue for the reform of the Labour Code, the penalties provided for in the event of anti-union discrimination during employment are increased substantially in order to ensure that they are sufficiently dissuasive. It also requests the Government to ensure the adoption of a specific provision establishing protection against anti-union discrimination at the time of recruitment.***

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

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

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

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

## Honduras

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as the information at its disposal in 2019.

The Committee notes the supplementary observations of the International Trade Union Confederation (ITUC) received on 16 September 2020, and the joint observations of the General Confederation of Workers (CGT) and the Workers' Confederation of Honduras (CTH), received on 5 October 2020. The Committee also notes the observations of the Honduran National Business Council (COHEP), received on 1 October 2020. The Committee notes the Government's replies to these various observations, which refer to matters examined by the Committee in the present observation.

#### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussion which took place in June 2019 in the Conference Committee on the Application of Standards (hereinafter: the Conference Committee) concerning the application of the Convention by Honduras. The Committee observes that the Conference Committee, after noting with serious concern the allegations of acts of anti-union violence, including the allegations of physical aggression and murders, and the prevailing climate of impunity, and after also noting the ILO direct contacts mission that took place in May 2019 and the resulting tripartite agreement, asked the Government to apply the tripartite agreement, including with respect to: the establishment of a national-level committee by June 2019 to combat anti-union violence; the establishment of a direct line of communication between trade unions and relevant public authorities; the provision of prompt and effective protection to at-risk trade union leaders and members; the prompt investigation of anti-union violence with a view to arresting and charging those responsible, including the instigators; the transparency of the complaints received through biannual reporting; the need for awareness-raising in relation to protective measures available to trade unionists and human rights defenders; the reform of the legislative framework, and in particular the Labour Code and the Penal Code, in order to ensure compliance with the Convention; and the adoption of the operating regulations of the Sectoral Committee for the Handling of Disputes referred to the ILO (MEPCOIT) without prejudice to the complainants' right to file complaints with the ILO supervisory bodies.

### Direct contacts mission of May 2019 and follow-up action

The Committee takes due note of the direct contacts mission that took place in May 2019 on the basis of the conclusions adopted by the Conference Committee in June 2018. The Committee notes with ***interest*** the tripartite agreement signed on 24 May 2019 at the end of the mission, covering the three following matters: (i) anti-union violence; (ii) legislative reforms; and (iii) reinforcement of the Economic and Social Council (CES) with regard to freedom of association. In this regard, the Committee also notes the technical assistance mission carried out by the Office in September 2019 with a view to initiating support for the implementation of the tripartite agreement, and the various activities carried out with the assistance of the Office in September 2019 (training workshop on freedom of association and the application of international labour standards in judicial rulings; bipartite and tripartite workshop on Convention 87 and the legislative reforms to the Labour Code; and support workshop for the MEPCOIT).

### Trade union rights and civil liberties

In its previous comments, after expressing concern at the high number of reported cases of anti-union violence, in particular the murder of 14 members of the trade union movement, and at the limited progress in the corresponding investigations, the Committee firmly urged the Government to intensify its efforts to: (i) investigate all acts of violence against trade union leaders and members, with the aim of identifying those responsible and punishing both the perpetrators and the instigators of these crimes; and (ii) provide prompt and effective protection to at-risk trade union leaders and members. In this regard, the Committee recalls especially that it urged the Government to take the necessary measures to ensure that all the competent authorities tackle in a coordinated manner, and as a priority, the acts of anti-union violence; that account is fully and systematically taken in investigations of the possible anti-union nature of murders of members of the trade union movement; that the exchange of information between the Public Office of the Prosecutor and the trade union movement is improved; and that the budget is increased for both investigations into acts of anti-union violence and protection schemes for members of the trade union movement.

The Committee notes the information from the Office of the Public Prosecutor supplied by the Government in 2019 concerning 22 cases of alleged anti-union violence, including 16 murders. The Committee observes that this information indicates that: (i) seven cases are being investigated (murders of Sonia Landaverde Miranda, Alfredo Misael Ávila Castellanos, Evelio Posadas Velásquez, Juana Suyapa Posadas Bustillo, Maribel Sánchez, Fredy Omar Rodríguez and Roger Abraham Vallejo); (ii) five cases are before the courts (with regard to the murders of Alma Yaneth Díaz Ortega, Uva Erlinda Castellanos Vigil, José Ángel Flores and Silmer Dionisio George, the corresponding arrest warrants are due to be served; with regard to the murder of Claudia Larissa Brizuela, the perpetrator has been convicted but has appealed against the conviction); (iii) five cases have been shelved or concluded (the judicial proceedings relating to the murders of Manuel Crespo and Ilse Ivania Velásquez Rodríguez have been concluded, while the investigations into the threats against Miguel López, Nelson Nuñez and Víctor Manuel Crespo Murcía have been shelved); and (iv) five cases have not been registered because no legal complaints have been filed in relation to them (deaths of Martin Florencio and Félix Murillo López; alleged abduction of Moisés Sánchez; alleged assault against Hermes Misael Sánchez; and alleged threats against Miguel López).

The Committee also notes that, in its 2019 report, Government emphasized that the tripartite agreement of May 2019 provided for the establishment, within the CES, of a Committee on Anti-Union Violence comprising representatives from the authorities of the Secretariat-General for Government Coordination, the Ministry of Labour and Social Security and the Secretariat of Human Rights, and social partners represented in the CES, with actors in the judicial system also invited to participate. The Committee observes that, according to the tripartite agreement, the main functions of the Committee on Anti-Union Violence are to: (i) establish a direct line of communication between the trade unions and the State regarding anti-union violence; (ii) ensure the participation of trade unions in mechanisms for the protection of human rights defenders; and (iii) promote effective support for investigations into acts of anti-union violence. The Committee also observes that the tripartite agreement, signed on 24 May 2019, provided for a period of 30 days to establish the Committee on Anti-Union Violence, which would provide a status report to the CES. The Committee notes that in its supplementary report the Government indicates that the Committee on Anti-Union Violence was formally established on 18 September 2019, and that on 25 February 2020 it issued its first report on the establishment and action undertaken by this Committee of the CES. The Government also provides information on the various activities undertaken by the Committee, including: (i) two meetings with workers' representatives to discuss the mechanism for the protection of human rights defenders; (ii) a meeting with representatives of three unions at risk to review and prioritize the action of the protection mechanism; and (iii) the holding of extraordinary meetings to examine the murder of the trade union leader Jorge Acosta and the situation of other unionists whose physical safety is endangered, and to ensure that the necessary investigations are carried out by the competent institutions.

With regard to the protection measures for at-risk members of the trade union movement, the Committee recalls that in its 2019 report the Government indicated that: (i) a tripartite workshop was held

within MEPCOIT on the National Protection System, which provides protection to all human rights defenders in the country, with the aim of publicizing it among the social partners; (ii) since 2015, a total of 427 requests for protection measures have been processed; (iii) 210 persons are currently under the responsibility of the Directorate-General for the National Protection System; and (iv) four trade unionists have been the recipients of protection measures (Miguel Ángel López, Moisés Sánchez, Nelson Geovanny Núñez (who are currently out of the country) and Martha Patricia Riera (whose case file has now been shelved)).

The Committee notes the ITUC's indications in its 2019 observations that: (i) the Network against Anti-Union Violence verified the occurrence of 109 acts of anti-union violence in Honduras between January 2015 and February 2019; (ii) 38 acts of violence against trade unionists, including 11 death threats, were recorded in 2018 alone; (iii) the use of violence by the authorities has increased, as shown by the deployment of the armed forces in a crackdown on protests by teachers and doctors in June 2019; (iv) with regard to the numerous reported murders of members of the trade union movement, only one conviction is known to have been handed down, and this is currently the subject of an appeal; (v) the Office of the Public Prosecutor has not taken any action to formalize mutual cooperation to ensure that these cases are investigated; and (vi) the trade union movement is not represented on the National Council for the Protection of Human Rights Defenders, which is the body responsible for formulating preventive national policies for the protection of the life and integrity of at-risk population groups, including trade unionists.

The Committee notes with ***deep concern*** that in its supplementary observations the ITUC reports the murder of Jorge Alberto Acosta, leader of the Workers' Union of the Tela Railroad Company (SITRATERCO) on 16 November 2019, and its allegations that the National Protection Mechanism for human rights defenders, journalists, social communicators and actors in the justice system is not effective and that, despite the reiterated calls by the trade unions, the Mechanism has not investigated threats or provided adequate protection measures for trade unionists who are under threat. The ITUC also denounces the judicial persecution of the Secretary General of the Union of Workers in Agroindustry and Allied Trades (STAS), who had previously been abducted, and emphasizes that since 2019 he has once again received death threats. The Committee further notes the supplementary observations of the CGT and the CTH in which they indicate that, despite the fact that the Committee on Anti-Union Violence has held some information and follow-up meetings on various subjects, it has not made any progress in implementing practical solutions, which raises questions about its effectiveness.

The Committee notes that, in its 2019 and 2020 observations, the COHEP indicates, with reference to the measures adopted concerning anti-union violence, that: (i) the Committee on Anti-Union Violence was not established within the 30-day period following the signature of the agreement; (ii) despite the fact that the Committee on Anti-Union Violence provided for the participation of several institutions, including the Office of the Public Prosecutor, the Office of the Attorney General of the Republic and the National Commissioner for Human Rights, their participation has been limited and certain institutions, and particularly the Office of the Public Prosecutor, have not attended the meetings despite their invitations to do so; (iii) up to now, there has been no formal exchange of information between the Office of the Public Prosecutor and the social partners; and (iv) no information has yet been received on the coverage by the National Protection System of members of the trade union movement. The COHEP considers that, to improve the operation of the Committee on Anti-Union Violence, it is necessary to implement the ILO's recommendations, particularly with regard to the training of officials who receive complaints of anti-union violence in the Office of the Public Prosecutor, the rules of procedure of the Committee on Anti-Union Violence and the tripartite determination of anti-union practices. The COHEP urges the Government to investigate whether the acts of violence referred to previously were committed for anti-union reasons and to increase the budget allocated to investigations of acts of anti-union violence.

The Committee notes the Government's indication, in reply to the supplementary observations of the ITUC, that since 25 April 2018, Mr Acosta and ten other members of the executive committee of SITRATERCO benefited from protection measures, which were regularly reassessed. The Committee notes the Government's indication that, following the murder of the trade unionist, the Secretariat of Labour and the Committee on Anti-Union Violence called on the Office of the Public Prosecutor, the Investigator General, the Secretary of State for Security and the Human Rights Secretariat to undertake an investigation to elucidate the facts, punish those responsible and ensure the protection of the other members of the executive committee of the SITRATERCO. With regard to the trade union leader Moisés Sánchez, the Government indicates that both he and his brother, the trade unionist Misael Sánchez, as well as the President of SINTRASEMCA, Ms Lucidia Isela Juárez, are currently covered by various protection measures and that priority is being given to the investigation of the death threats that they have received.

The Committee notes that the Government, in its reply to the supplementary observations of the COHEP, CGT and CTH, recognizes the great challenge that it is facing in relation to violence against trade unionists, and emphasizes that the Committee on Anti-Union Violence is in the process of being established and structured, and the Government further indicates that over a short period it has taken

significant action and while it acknowledges that it has faced and continues to face significant limitations, its efforts in relation to the violence will gradually be strengthened.

The Committee takes due note of the various items of information supplied by the Government and the social partners. The Committee expresses ***deep concern*** at the murder of Jorge Acosta, the persistent allegations of numerous acts of anti-union violence and also at the very low number of judicial convictions up to now for murders of members of the trade union movement.

The Committee recalls that in its comment the previous year, noting the report of the direct contacts mission and the establishment of the Committee on Anti-Union Violence, it emphasized the urgent need for the various State institutions to finally respond to the situation of anti-union violence that reigns in the country by undertaking the coordinated and priority action that the gravity of the situation requires. In this regard, the Committee requested the Government to take specific and rapid measures in relation to the following six points: (i) ensure due compliance with all elements in the tripartite agreement concerning action against anti-union violence; (ii) ensure the active involvement of all the relevant authorities in the Committee on Anti-Union Violence, especially the Secretariat of Human Rights, the Office of the Public Prosecutor and the judiciary; (iii) institutionalize and make effective the participation of the representative trade unions in the National Council for the Protection of Human Rights Defenders; (iv) draw up a special investigation protocol to enable the Office of the Public Prosecutor to examine systematically and effectively any anti-union motives behind the acts of violence affecting members of the trade union movement; (v) ensure that the criminal courts give priority treatment to cases of anti-union violence; and (vi) ensure adequate and prompt protection for all at-risk members of the trade union movement. The Committee observes that, since the establishment of the Committee on Anti-Union Violence, meetings have been held with workers' representatives to discuss the protection mechanism for human rights defenders, dialogue has been promoted between the representatives of trade unions that are at risk and the Committee on Anti-Union Violence on improving the effectiveness of the protection measures, and meetings have been held to discuss the cases of trade unionists who are at risk and the murder of the trade union leader Jorge Acosta.

Nevertheless, the Committee observes that both workers' organizations and employers express concern regarding: the absence of practical solutions in the Committee on Anti-Union Violence to bring an end to violence against trade unionists; the limited participation of actors in the justice system (the Office of the Public Prosecutor and the judicial authorities) and other institutions in the Committee on Anti-Union Violence; and the lack of adequate and rapid protection measures for members of the trade union movement. ***Expressing deep concern at the low number of trade unionists who have benefited from protection measures in comparison with the very high number of acts of anti-union violence reported by national and international trade unions, the ineffectiveness of the protection measures, the persistence of acts of anti-union violence and the lack of progress in their investigation, the Committee once again urges the Government and all the competent authorities to take the necessary measures in the near future, including budgetary allocations, to give effect to the six points the Committee had enumerated in its previous comment and has reiterated above. Aware of the efforts made by the Government and the additional obstacles resulting from the COVID-19 pandemic, the Committee recalls that the Office has made its technical assistance available to the Government and it requests the Government to report any progress achieved in this respect.***

***The Committee also requests the Government to continue providing detailed information on criminal investigations and proceedings relating to acts of violence against members of the trade union movement, including the murder of the trade unionist Jorge Acosta.***

### Legislative issues

*Articles 2 et seq. of the Convention. Establishment, autonomy and activities of trade unions.* The Committee recalls that it has been requesting the Government for many years to amend the following provisions of the Labour Code to bring them into conformity with the Convention:

(a) the exclusion from the rights and guarantees of the Convention of workers in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (section 2(1));
(b) the prohibition of more than one trade union in a single enterprise (section 472);
(c) the requirement of at least 30 workers to establish a trade union (section 475);
(d) the requirement that the officers of a trade union must be of Honduran nationality (sections 510(a) and 541(a)), be engaged in the corresponding activity (sections 510(c) and 541(c)) and be able to read and write (sections 510(d) and 541(d));
(e) the prohibition on strikes called by federations and confederations (section 537);
(f) the requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike (sections 495 and 563);
(g) the authority of the competent minister to end disputes in oil industry services (section 555(2));
(h) government authorization or a six-month period of notice for any suspension of work in public services that do not depend directly or indirectly on the State (section 558); and

(i) the referral to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), of collective disputes in public services that are not essential in the strict sense of the term (sections 554(2) and (7), 820 and 826).

The Committee notes that the tripartite agreement of 24 May 2019 provides that "in the context of the CES and on the basis of the relevant pronouncements of the ILO supervisory bodies", the tripartite constituents in the country "shall agree to undertake a broad process of discussion and tripartite consensus which, subject to the existence of appropriate conditions, will make it possible to align the labour legislation with the Convention". The Committee also notes that, in its report, the direct contacts mission observed that "some aspects of the reforms called for by the ILO supervisory bodies raise issues for one or other of the social partners".

The Committee also notes the observations of the social partners concerning the process of the revision of the labour legislation in order to bring it into line with the Convention. In the first place, the Committee notes COHEP's indication that: (i) it is in favour of amending sections 2, 472, 475, 510 and 541 of the Labour Code, as requested by the Conference Committee in June 2018; (ii) it is still waiting for a reform proposal from the Government; (iii) account should be taken of the content of the discussions on the comprehensive reform of the Labour Code held between 1993 and 1995 with the support of the Office and which gave rise to broad consensus (except on the right to strike and solidarity associations); (iv) any reform should be the subject of tripartite dialogue and supported by technical assistance from the Office; and (v) expresses its view that, in the context of social dialogue, the need must be recognized for a Labour Code which adapts industrial relations to the modern and future world of work..

The Committee further notes the ITUC's indication that: (i) there is a total absence of effective social dialogue in the country and this obstructs the reaching of tripartite consensus on legislative reform; and (ii) the situation described above raises fears among the national trade unions that the process of reforming the Labour Code may lead to the adoption of legislation which represents a backward step in terms of labour rights and freedom of association.

The Committee finally notes the Government's indication that: (i) it is seeking ways to achieve tripartite consensus on the reform of the Labour Code; (ii) to this end, a tripartite workshop was held in the CES on 11 September 2019; (iii) on 26 September 2019, the Government asked the social partners to specify their official position regarding the legislative reforms by 25 October 2019, but only received a reply from the employers; and (iv) the discussions on the reform of the Labour Code have been taken up again since February 2020.

Recalling its observation in its previous comment that the establishment of tripartite social dialogue on the reform of the labour legislation, as envisaged in the tripartite agreement of May 2019, would call for a special effort in terms of building trust between the parties, the Committee notes with ***regret*** the absence of tangible progress in this respect. ***While it is aware of the obstacles that the COVID-19 pandemic may have raised in this regard, the Committee firmly expects the Government to move forward as rapidly as possible, with the technical support of the Office, in the implementation of the process of tripartite discussions envisaged in the agreement of May 2019 so that it will be able to report progress in the preparation of the reforms that have been requested for many years.***

*New Penal Code*. The Committee recalls that in its previous comments it noted the repeal of section 335B of the Penal Code concerning the advocacy, glorification or justification of terrorism and, observing that the direct contacts mission had been informed of the adoption of a new Penal Code, it requested the Government to provide information on the entry into force of the new Penal Code and on any amendments made to the definition of the crime of terrorism. The Committee notes that, in its supplementary information, the Government reports the entry into force of the new Penal Code on 25 June 2020, as set out in Legislative Decree No. 130-2017. In this regard, the Committee notes that, in his 2019 report on his visit to Honduras, the Special Rapporteur on the situation of human rights defenders, while noting the repeal of section 335B of the Penal Code, expressed concern regarding certain penal provisions respecting association for terrorist purposes, unlawful occupation, unlawful assembly and demonstration, slander and libel which, as they are broad in scope, could result in the criminalization of human rights defenders and have a dissuasive effect on their activities (A/HRC/40/60/Add.2). The Committee also notes that the Office of the United Nations High Commissioner for Human Rights, in its 2020 report on the situation of human rights in Honduras, expresses concern at the negative impact that the Penal Code could have on freedom of expression and assembly, and calls for the implementation of an open, transparent and comprehensive consultation process to review the provisions of the Penal Code that do not comply with international and regional human rights norms and standards (A/HRC/43/3/Add.2). ***In light of the concerns raised in relation to the scope of certain crimes, including the crime of terrorist association, and the impact of certain provisions of the new Penal Code on freedom of expression and assembly, which are fundamental for the effective exercise of freedom of association, the Committee requests the Government, in consultation with the most representative organizations of employers and workers, to assess the impact of the provisions of the Penal Code on the free exercise of trade union activities. The Committee requests the Government to provide information in this respect.***

*Application of the Convention in practice.* The Committee notes the Government's indication that: (i) legal personality was granted to seven trade union organizations in 2017 (three in the public sector, four in the private sector), eight in 2018 (seven in the private sector, one in the public sector), and eight between January and August 2019 (all in the private sector); and (ii) pursuant to the Labour Inspection Act adopted on 23 January 2017, a total of 13 fines for violations of freedom of association were imposed between 1 January 2018 and August 2019 (out of an overall total of 261 fines). The Committee also notes that: (i) the CGT and the CTH state in their observations that the Labour Inspection Act is still not being applied in a satisfactory manner on account of the inaction of the Office of the Attorney-General in this regard; (ii) the COHEP indicates in its supplementary observations that the Office of the Attorney-General has issued a preliminary report on the cases in which fines are being collected, that an inter-institutional agreement has been signed between the Office of the Attorney-General and the Ministry of Labour and Social Security, and that there is a pilot proposal to commence a process of the collection of fines focussing on the application of the Labour Inspection Act; and (iii) the direct contacts mission indicates in its report that it received from trade union federations numerous allegations of violations of freedom of association in practice, especially in the agri-export and education sectors.

Lastly, the Committee notes that the tripartite agreement of May 2019, in its section on strengthening the CES with regard to freedom of association, provides for the operation of the MEPCOIT as the dispute settlement body in the area of labour relations, and for the promotion of the good practices of the bipartite committee for the *maquila* (export processing) sector in other sectors of the economy. The Committee observes in this regard that a technical assistance mission of the Office carried out in September 2019 enabled an exchange of experience with the moderator of the conflict resolution body of Panama. The Committee notes in this regard that, in its supplementary observations, the COHEP regrets that, since the meetings held in September 2019 in the MEPCOIT, there has been no further significant progress.

***Noting the supplementary information provided, the Committee once again requests the Government, in the process of applying in practice the Labour Inspection Act, to pay special attention to respect for trade union rights in the agri-export and education sectors. The Committee requests the Government to provide specific information in this regard. While it is aware of the obstacles that may have been raised in this respect by the COVID-19 pandemic, the Committee once again hopes that the MEPCOIT will start its dispute settlement activities in the very near future, so that it can examine the alleged violations of freedom of association reported by the trade union federations to the direct contacts mission. The Committee requests the Government to provide information on this subject and on the promotion of the good practices of the bipartite committee for the maquila sector in other sectors of the economy.***

***Recalling that in its previous comment it welcomed the commitments made in the tripartite agreement signed at the end of the direct contacts mission and that it took due note of the technical assistance provided by the Office to contribute to its implementation, the Committee hopes that it will soon be able to note significant progress in the resolution of the serious violations of the Convention which have been recorded for a number of years.***

## Japan

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

The Committee notes the observations of the Rentai Union Suginami, the Rentai Workers' Union, Itabashi-ku Section, the Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union) and the Union Rakuda (Kyoto Municipality Related Workers' Independent Union) received on 25 August and 25 September 2020, and the reply of the Government thereto. The Committee also notes the observations of the Japan Business Federation (NIPPON KEIDANREN) transmitted by the Government on 30 September 2020.

Not having received other supplementary information, the Committee proceeded with the examination of the application of the Convention on the basis of the observations received from the social partners this year and the Government's reply thereto (see *Article 3*), as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC–RENGO), transmitted with the Government's report, and the Government's reply thereto. JTUC–RENGO indicated that it was hopeful at the outset that the Government would address the issues of implementation of the Convention as an enforcement of the "Resolution on Japan's increased contribution to the ILO" adopted on 26 June 2019 by the Diet on the occasion of the Centenary of the Organization. In the Resolution, the Diet noted that "given the role it should be playing to attain the ILO's Fundamental Principles, International Labour Standards, tripartism and reach the goal of decent work is becoming greater and greater, it recognizes a new importance of the role the country should be playing in the ILO,

and resolve in the future to continue contributing maximally to the pursuit and actualization of these principles together with the other Member States worldwide …". However, JTUC–RENGO regrets that the report of the Government reveals an apparent lack of will to resolve issues within the current legal system. The Committee also notes the observations of the Rentai Union Suginami, the Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union), the Rentai Workers' Union, Itabashi-ku Section; and the Union Rakuda (Kyoto Municipality Related Workers' Independent Union), received on 19 July 2019, in relation to the right to organize of local public service employees and their unions. The Committee notes the observations of the International Organisation of Employers (IOE) and the NIPPON KEIDANREN, received on 30 August 2019, and the Government's reply thereto.

*Article 2 of the Convention. Right to organize of firefighting personnel*. The Committee recalls its long-standing comments concerning the need to recognize the right to organize for firefighting personnel. For the past years, the Government had been referring to the operation of the Fire Defence Personnel Committee (FDPC) system, which was presented as an alternative. The role of the FDPC was to examine proposals on working conditions by the personnel and to submit its conclusions to the chief of the fire department. The Government further indicated that surveys, directed to fire defence headquarters, were regularly conducted to gather information on the deliberations and results of the FDPC. The Government also mentioned a specific survey, conducted in January 2018, aiming at assessing the operation of the FDPC system and eventually seeking improvement. The results of the survey were discussed in the Fire and Disaster Management Agency. While the outcome of this survey was that the FDPC system is operated properly, the workers representatives in the Fire and Disaster Management Agency called for improvement in the operation of the FDPC, including procedural transparency, and a more conducive environment for personnel to provide their opinions to the FDPC. The Government indicates that a new implementation policy of the FDPC was consequently developed with the social partners and came into force in April 2019. The Fire and Disaster Management Agency had notified all fire defence headquarters of the new policy requesting them to hold information sessions on the amendments to the policy. Moreover, the Government indicates that, since January 2019, the Ministry of Internal Affairs and Communications held three consultations with the workers representatives where it discussed the Government's opinion that fire defence personnel are considered as police in relation to the implementation of the Convention. The Government indicates that the Fire and Disaster Management Agency will continue to hold regular consultations in this regard.

The Committee notes the observations of JTUC–RENGO indicating that in discussions held with the All-Japan Prefectural and Municipal Workers' Union (JICHIRO), the Government reaffirmed its views that firefighters are considered as police. The Committee also notes the view of NIPPON KEIDANREN that the reporting line, the organizational managerial order, and the cooperative relationship of fire defense personnel with workers' organizations may affect the residents' trust in firefighting, the nation's safety, and security. Therefore, according to NIPPON KEIDANREN, it is necessary to continue carefully reviewing the granting of the right to organize to firefighters.

The Committee however notes the concerns raised by JTUC–RENGO that the Government has not responded directly to the Conference Committee's conclusions from 2018, and that no time-bound action plan was developed with social partners as requested by the Conference Committee. The only development that could be noted is the intention to proceed in consultations between the Ministry of Internal Affairs and Communications and JICHIRO, which have been conducted since July 2018. JTUC–RENGO regrets that the Government continues to allude to old reports of the Committee on Freedom of Association (CFA), which predated the Government's ratification as justification for the status quo, and recalls that the CFA's June 2018 examination of these issues called on the Government to fully grant to firefighters the rights to organize and to collective bargaining.

While it appreciates the information on the new implementation policy for the FDPC, the Committee wishes to emphasize that this policy remains distinct from the recognition of the right to organize under *Article 2* of the Convention. The Committee notes the developments in relation to consultations with JICHIRO initiated in January 2019 and the intention of the Government to maintain this dialogue. ***The Committee once again expresses its firm expectation that continuing consultations will contribute to further progress towards ensuring the right of firefighting personnel to form and join an organization of their own choosing to defend their occupational interests. The Committee requests the Government to provide detailed information on any developments in this regard.***

*Article 2. Right to organize of prison staff*. The Committee recalls its long-standing comments concerning the need to recognize the right to organize of prison staff. The Committee notes that the Government reiterates its position that prison officers are included in the police. The Government also reiterates that this view is accepted by the Committee on Freedom of Association in its 12th and 54th Reports. According to the Government, granting the right to organize to the personnel of penal institutions would pose difficulty for the appropriate performance of their duties and the proper maintenance of discipline and order in the penal institutions. However, taking into account the Committee's previous comments, the Government decided to grant meaningful opportunities for the

personnel of penal institutions to express their opinions by the following measures: (i) the Ministry of Justice organized meetings for executive officials and representatives of the personnel from each penal institution to the Regional Correctional Headquarters (RCH) to exchange opinions on the improvement of work environments and recreational activities for the personnel; (ii) in the framework of the agenda on "improvement of workplace to prevent resignation", female personnel will be interviewed and their opinions will be examined and reflected in measures for improvement of their work conditions; and (iii) inspectors from the Ministry of Justice and the RCH will provide opportunities to the personnel to express their opinions on their working conditions. The Government recalls that contact persons are designated in penal institutions to hear proposals from the personnel on their proposal to improve their working conditions, and that a Penal Institution Visiting Committee is established in each penal institution to hear the personnel on matters such as the administration of the penal institution, working conditions, work–life balance, paid leave, etc. Finally, the Government asserts that in cases where any emergency occurs in a penal institution, and that it is required to promptly and properly bring the situation under control, by force if necessary, granting the right to organize to the personnel of penal institutions could pose a problem for appropriate performance of their duties and the proper maintenance of discipline and order.

The Committee notes the observations from NIPPON KEIDANREN supporting the Government's view that prison officers should be considered as part of the police under *Article 9* of the Convention.

The Committee also notes the observations from JTUC–RENGO regretting that the Government did not follow up on the Committee's previous comments to consider the different categories of prison officers in determining, in consultation with the social partners, whether they are part of the police. JTUC–RENGO is of the view that: (i) the different measures described by the Government to provide opportunities to the personnel of penal institutions to express their opinions on their working conditions are irrelevant to union rights, including the right to organize. Since they merely constitute exchange of views with individual employees, they cannot be considered as negotiation; (ii) these measures described by the Government serve as substitutes for a meaningful discussion on granting the right to organize to the personnel of penal institutions; (iii) the carrying and use of weapons and administration of judicial police work, as motives for denying the right to organize to prison officers, does not constitute a logical argument. The right to organize is recognized for labour standards inspectors, authorized fisheries supervisors and other employees designated as special judicial police officials similarly to prison officers. Furthermore, the right to organize is recognized for narcotics agents, despite the fact that they are special judicial police officials and are granted the authority to carry and use weapons; and (iv) the increased utilization of private finance initiative (PFI) techniques for correctional institutions and the private consignment of a variety of work, and the fact that the Government is not questioning the right to organize of private sector workers, contradicts the argument put forward by the Government not to grant the right to organize to prison staff because of the need for this category of workers to be able to maintain control in cases of emergency situation. Finally, JTUC–RENGO observes that regulations granting the right to organize to the private sector workers receiving these consignments has not been disputed. Consequently, for the union, the argument of the Government that it is not appropriate to give the personnel of penal institutions the right to organize, because it poses a problem for appropriate performance of duties and proper maintenance of discipline and order in case of an emergency situation, falls short due to the Government's own policy on private sector consignment in penal institutions.

The Committee considers it useful to recall that, in previous reports, the Government referred to the following distinction among staff in penal institutions: (i) prison officers with a duty of total operations in penal institutions, including conducting security services with the use of physical force, who are allowed to use small arms and light weapons; (ii) penal institution staff other than prison officers who are engaged directly in the management of penal institutions or the treatment of inmates; and (iii) penal institution staff designated, by virtue of the Code of Criminal Procedure, to carry out duties of the judicial police officials with regard to crimes which occur in penal institutions and who have the authority to arrest, search and seize. While appreciating the information provided by the Government in its report on the new initiatives to give opportunities to the personnel of penal institutions to provide their opinions on various aspects, including on their working conditions, the Committee emphasizes that these measures remain distinct from the recognition of the right to organize under *Article 2* of the Convention. The Committee further observes that the Government has not engaged, despite reiterated calls from this Committee and the Conference Committee, in any consultation with the social partners to consider the different categories of prison officers. ***The Committee therefore urges the Government to take, in consultation with the national social partners and other concerned stakeholders, the necessary measures to ensure that prison officers other than those with the specific duties of the judicial police may form and join an organization of their own choosing to defend their occupational interests, and to provide detailed information on the steps taken in this regard***.

*Article 3. Denial of basic labour rights to public sector employees.* The Committee recalls its long-standing comments on the need to ensure basic labour rights for public service employees, in particular

that they enjoy the right to industrial action without risk of sanctions, with the only exception being public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. The Committee notes the general information provided by the Government on its overall approach, which remains to continue to hear opinions from employee organizations. The Committee also notes that, according to the Government, the number of employees in Governmental Administrative Agencies has diminished from 807,000 in March 2003 to 299,000 in March 2019, leaving fewer workers in the public sector without their basic labour rights.

Furthermore, the Committee recalls that the Government refers to the procedures of the National Personnel Authority (NPA) as a compensatory guarantee for public service employees deprived of their basic labour rights. Noting the persistent divergent views on the adequate nature of the NPA as a compensatory measure, the Committee requested the Government to consider, in consultation with the social partners, the most appropriate mechanism that would ensure impartial and speedy conciliation and arbitration. In its report, the Government indicates that the NPA held 213 official meetings with employees' organizations in 2018. The Government also reiterates that these compensatory measures maintain appropriately the working conditions of public service employees. The Committee notes the observations from NIPPON KEIDANREN supporting the Government's intention to continue to review carefully measures for an autonomous labour–employer relations system (which in the past the Government had indicated would grant to national public service employees in the non-operational sector the right to negotiate working conditions and to conclude collective agreements).

The Committee also notes the observations from the JTUC–RENGO regretting that the Government's position on the autonomous labour–employer relations system has not evolved and the Government's failure to take action as requested by the ILO supervisory bodies. JTUC–RENGO regrets that, despite assertion to the ILO that it would take into consideration the recommendation of the Conference Committee, in a meeting in March 2019, the Government merely gave the same response it has been repeating to employees' organizations for the last three years, that "there are wide-ranging issues regarding autonomous labour–management relations systems, so while exchanging views with employees organizations, it would like to consider this carefully". Consequently, JTUC–RENGO expresses its deep concern at the apparent lack of intention on the part of the Government to reconsider the legal system with regard to the basic labour rights of public service employees, and once again requests that the ILO investigate these matters through a mission to the country.

***The Committee urges the Government to indicate any measures taken or envisaged to ensure that public service employees, who are not exercising authority in the name of the State, enjoy fully their basic labour rights, including the right to industrial action. It further urges the Government to indicate any consultation with the social partners concerned for the review of the current system with a view to ensuring effective, impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, will be fully and promptly implemented. In the meantime, the Committee requests the Government to provide information on the public departments and divisions that are no longer classified as Governmental Administrative Agencies since March 2003, accounting for the reduction in the number of workers in the public sector without their basic labour rights. It also requests the Government to continue to provide detailed information on the functioning of the NPA recommendation system.***

Furthermore, the Committee notes the observations of Rentai Union Suginami, Rentai Workers' Union, Union rakuda and Apaken Kobe referring to the adverse impact of the entry into force of the revised Local Public Service Act in April 2020 on their right to organize, and stating that: (i) non-regular local public service employees and their unions are not covered by the general labour law that provides for basic labour rights and their ability to appeal to the labour relations commission in case of alleged unfair labour practice; (ii) the new system, which aimed at limiting the use of part-time staff on permanent duties, has the effect of increasing the number of workers stripped of their basic labour rights; (iii) the conditional yearly employment system in place has created job anxiety and weakens union action and (iv) these situations further call for the urgent restoration of basic labour rights to all public service employees. The Committee notes the Government's indication that the legal amendments ensure proper appointment of special service personnel and temporary appointment employees, and clarify the framework of appointment of regular service part-time staff. The amendments guarantee the status of these personnel and employees along with the introduction of some allowances due to them. According to the Government, the change of basic labour rights condition is therefore the consequence of the guarantee of originally expected appointment form to them. Consequently, in the Government's view, the statement from Rentai Union Suginami that the amendments deprive temporary and part-time officials of their basic labour rights is not accurate. While noting the Government's reiteration that the change of status improves the treatment of part-time employees, the Committee observes that these amendments have the effect of broadening the category of public sector workers whose rights under the Convention are not fully ensured. ***The Committee therefore urges the Government to expedite its consideration of the autonomous labour relations system so as to ensure that municipal unions are not deprived of their***

***long-held trade union rights through the introduction of these amendments. It requests the Government to provide detailed information on the measures taken or envisaged in this regard.***

The Committee notes the Government's statement that it is examining carefully how to respond to the conclusions and recommendations formulated by the Conference Committee in 2018 and the various concerns regarding measures for the autonomous labour-employer relations system, while continuing to hear opinions from the social partners. The Government intends to regularly provide information on initiatives taken in this regard in good faith. ***Recalling the Conference Committee conclusions, including the lack of meaningful progress in taking necessary measures regarding the autonomous labour-employer relations system, the Committee once again strongly encourages the Government to indicate any measures taken or envisaged to elaborate, in consultation with the social partners concerned, a time-bound plan of action to implement the recommendations made above and to report on any progress made in this respect.***

## Jordan

### Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1968)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 24 September 2020 concerning various matters examined by the Committee in its previous comments. The Committee notes that the ITUC also denounces: (i) the arrest and detention of members of the Jordanian Teachers' Association (JTA) between 25 July and 23 August 2020; (ii) the filing of criminal charges against the JTA and its President; and (iii) the closure by the Government of the JTA offices for two years from 25 July 2020, which effectively deprives teachers and education staff of representation. ***Recalling that teachers are fully covered by the Convention and that the exercise of the rights to organize and to bargain collectively requires that trade union organizations be able to freely carry out their activities to defend the interests of their members, the Committee requests the Government to provide its comments on the ITUC's allegations and to ensure compliance with the Convention in all the sectors covered, including the education sector.***

The Committee also notes the report of the Government (not requested) received on 16 September 2020 relating to the various points raised by the Committee in its last observation but not referring to the measures taken against the JTA contained in the observations of the ITUC. The Committee will consider the content of this report as part of the regular cycle. ***In this regard, the Committee requests the Government to provide any other information relating to the application of the Convention, as well as a copy of the amendments to national legislation referred to in the above-mentioned report.***

## Kazakhstan

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 8 and 16 September 2020, and of the Confederation of Employers of the Republic of Kazakhstan (KRRK), received on 1 October 2020, referring to the issues raised by the Committee below.

The Committee recalls that in their 2019 observations, the ITUC and the Federation of Trade Unions of Kazakhstan (FPRK) denounced the imprisonment, on 16 October 2019, of Mr Erlan Baltabay, the leader of the Independent Oil and Energy Workers' Union. Expressing its concern over this allegation, the Committee had requested the Government to provide its comments thereon. The Committee notes that in its 2020 observations, the ITUC recalls that Mr Baltabay was sentenced to seven years of imprisonment in July 2019 for the alleged misappropriation of approximately US$28,000 of union dues. According to the ITUC, Mr Baltabay was released in August 2019 after being pardoned by the President and given a fine of US$4,000 in exchange for his remaining prison sentence. Mr Baltabay insisted on his innocence, refused to pay the fine or recognize the presidential pardon, and argued in court that criminal charges of large-scale misappropriation of funds levied against him were politically motivated and unfounded. The ITUC further indicates that on 16 October 2019, Mr Baltabay was given a new prison sentence of five months and eight days imprisonment for union-related activities and for not paying the fine; while Mr Baltabay was released from jail on 20 March 2020, he is still banned from any public activity, including trade union activities, for the next seven years, as per the previous sentence.

The Committee further notes the ITUC indication that Ms Larisa Kharkova, the Chairperson of the now liquidated Confederation of Independent Trade Unions of Kazakhstan (KNPRK), who was sentenced to four years of restriction on her freedom of movement and a five-year ban on holding any position in a public or non-governmental organization, continued to serve her sentence.

The Committee notes that the Government does not dispute the facts as outlined by the ITUC, but indicates that judicial decisions in the case of Mr Baltabay were made in respect of ordinary crimes and were not related to his participation in legal trade union activities.

The Committee further notes that the cases of Mr Baltabay and Ms Kharkova continue to be examined by the Committee on Freedom of Association (CFA) in the framework of Case No. 3283 (see 392nd Report, October 2020). ***The Committee refers to the conclusions and recommendations of the CFA and urges the Government to provide detailed information on the cases of Mr Baltabay and Ms Kharkova.***

The Committee recalls that it had previously noted with deep concern the ITUC 2018 allegation of assault and injuries suffered by the chairperson of a trade union of workers of the fuel and energy complex in the Karaganda region and urged the Government to investigate the matter without delay and to bring the perpetrators to justice. The Committee had noted the information provided by the Government confirming the assault of the chairperson of the Trade Union of Workers in the Fuel and Energy Complex of Shakhtinsk, Mr Dmitry Senyavsky, by unknown persons on 10 November 2018. The Government indicated that pre-trial proceedings were opened under section 293(2)(1) of the Criminal Code (disorderly conduct). According to a forensic medical report, Mr Senyavsky suffered mild damages to his health. The Committee notes that in its 2020 observation, the ITUC indicates that two years after the assault, no suspects have been identified. The Committee notes that the Government reiterates in its supplementary report that the pre-trial investigation has been suspended pursuant to section 45(7)(1) of the Criminal Procedure Code (failure to identify the person who committed a crime) until new circumstances (evidence) come to light. ***The Committee requests the Government to continue to provide information on the developments in this case.***

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussion that took place in the Conference Committee in June 2019 concerning the application of the Convention. The Committee observes that the Conference Committee regretted the persistent lack of progress since the last discussion of the case in June 2017, in particular with regard to the serious obstacles to the establishment of trade unions without previous authorization in law and in practice, and the continued interference with the freedom of association of employers' organizations. The Conference Committee took note of the ILO high-level tripartite mission (HLTM) that took place in May 2018 and the resulting road map. The Committee notes that the Conference Committee called upon the Government to: (i) amend the provisions of the Law on Trade Unions consistent with the Convention, on issues concerning excessive limitations on the structure of trade unions which limit the right of workers to form and join trade unions of their own choosing; (ii) refrain from imposing restrictions on the right to hold elected positions in trade unions and the right to freedom of movement for engaging in legitimate trade union activities; (iii) ensure that the allegations of violence against trade union members are investigated, and where appropriate, impose dissuasive sanctions; (iv) review, in consultation with the social partners, the existing law and practice regarding re registration of trade unions with a view to overcoming the existing obstacles; (v) amend, in consultation with the most representative, free and independent employers' organizations, the provisions of the Law on the National Chamber of Entrepreneurs (NCE), and related regulations, in a manner that would ensure the full autonomy and independence of free and independent employers' organizations, without any further delay. In particular remove the provisions on the broad mandate of the NCE to represent employers and accredit employers' organizations by the NCE; (vi) ensure that the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) and its affiliates enjoy the full autonomy and independence of a free and independent workers' organization, without any further delay, and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents; (vii) confirm the amendment to legislation to permit judges, firefighters and prison staff, who do not occupy a military rank, to form and join a workers' organization; (viii) adopt legislation to ensure that national workers' and employers' organizations are not prevented from receiving financial assistance or other assistance by international organizations. In this regard, provide information on the legal status and contents of its recommendation regarding the authorization of workers' and employers' organizations to receive financial assistance from international organizations; and (ix) implement the 2018 road map in consultation with the social partners as a matter of urgency. The Conference Committee decided to include its conclusions in a special paragraph of the report.

The Committee notes that the Law on Trade Unions, the Labour Code, the Law on the NCE, the Criminal Code, the Code of Criminal Procedure and the Law on Public Associations were amended by virtue of adoption, in May 2020, of the Law on amendments and additions to some legislative acts of the Republic of Kazakhstan on labour issues. The Committee notes that in its conclusions and

recommendations in Case No. 3283 (see 392nd Report, October 2020), the Committee on Freedom of Association referred the examination of these legislative amendments to the Committee. The Committee examines them below.

*Article 2 of the Convention. Right to establish organizations without previous authorization*. The Committee recalls that following the entry into force of the Law on Trade Unions in 2014, all existent unions had to be re-registered. It recalls in this respect that the KNPRK affiliates were denied registration/re-registration, which ultimately led to its liquidation. Recalling the ITUC allegation of denials to register organizations, which previously formed the KNPRK, the Committee requested the Government to provide information on the current status of the KNPRK and to ensure that the KNPRK and its affiliates enjoyed the full autonomy and independence of a free and independent workers' organization, without any further delay, and were given the autonomy and independence needed to fulfil their mandate and to represent their constituents.

The Committee notes that the ITUC indicates that the Congress of Free Trade Unions (KSPRK) (the name under which the successor of the KNPRK had last tried to re-register) remains unregistered and that the Industrial Trade Union of Employees of the Fuel and Energy Sector is still waiting for its re-registration, while being unable to formally appoint a new chairperson.

The Committee notes the Government's indication that in the event that the registering authority (Ministry of Justice) identifies shortcomings, it issues a reasoned refusal, citing the applicable legislative provision, as per section 11 of the Law on the State Registration of Legal entities and the Official Registration of Branches and Representative Offices. The Government further indicates that the KSPRK has also received a reasoned refusal and that the Ministry of Labour and Social Protection of the Population (MLSPP) has held a series of meetings with the representatives of the Congress regarding the refusal to register it. The Government points out that if the trade union in question rectifies the indicated shortcomings, the Ministry of Justice stands ready to re-examine the application for registration. The Government further indicates that an explanation was provided to the applicant for registration of the Industrial Trade Union of Employees of the Fuel and Energy Sector as to the body the application for registration and the accompanying documents should be submitted to. However, according to the Government, the applicant is yet to address the relevant registering authority. ***Having duly noted the information provided by the Government, the Committee requests the Government to continue to provide information on the status of registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector***.

The Committee further recalls that it had previously noted that several pieces of legislation regulated registration and that some trade unions were denied re-registration because their by-laws were found not to be in conformity with either one or all of the applicable laws. The Committee had therefore requested the Government to engage with the social partners to review the difficulties identified by trade unions seeking registration with a view to finding appropriate measures, including legislative, to fully give effect to *Article 2* of the Convention and to ensure the right of workers to establish organizations without previous authorization.

The Committee notes the Government's explanation that trade unions may be established without previous authorization. Primary trade unions do not need to register. However, if a trade union wishes to become a legal entity (which entitles it to open a bank account), it must register with the justice authorities. The latter have the following powers to determine the status of trade unions: (1) to verify compliance with the legislation of documents submitted for registration; and (2) to issue certificates of state registration. In the case of refusal to register a trade union, the registering authority identifies shortcomings and issues a reasoned refusal. If the trade union in question rectifies these shortcomings, it may re-submit its application for registration, appending all necessary documents. The Government points out that the documents can be re-submitted an unlimited number of times. The Government indicates that it has made every effort to provide guidance on registration to all trade unions and informs that it has developed a step-by-step algorithm outlining the procedure for registration of trade unions (from the moment of preparing the necessary paperwork to the moment of registration). Furthermore, new rules of state services concerning state registration of entities with and without legal personality were approved in May 2020. The Committee welcomes that by virtue of the new rules the time frame for registration by the authority was reduced from 10 to five business days. The Committee notes the Government's indication that there are currently three national associations of trade unions in the country, 49 sectoral, 44 territorial and 348 local trade union organizations, which bring together around 3 million workers - or half of all employees in Kazakhstan. The Government points out that following the amendment of the Law on Trade Unions, one sectoral, nine local trade unions and six structures of sectoral trade unions were established in the country, and that there have been no reported problems with registration of trade unions. The Government further indicates that the new general agreement for 2021-23 will provide for protection against acts of interference in internal affairs of organizations. ***The Committee requests the Government to continue engaging with the social partners on the issues concerning the registration process.***

*Right to establish and join organizations of their own choosing*. The Committee had previously requested the Government to amend the following sections of the Law on Trade Unions so as to ensure the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure and to lower threshold requirements to establish higher-level organizations:

– sections 11(3), 12(3), 13(3) and 14(4), which required, under the threat of deregistration pursuant to section 10(3), the mandatory affiliation of sector-based, territorial and local trade unions to a national trade union association within six months following their registration, so as to ensure the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure; and
– section 13(2), which required a sector-based trade union to represent no less than half of the total workforce of the sector or related sectors, or organizations of the sector or related sectors, or to have structural subdivisions and member organizations on the territory of more than half of all regions, cities of national significance and the capital, with a view to lowering this threshold requirement.

The Committee notes with ***satisfaction*** that sections 11, 12, 13 and 14 of the Law on Trade Unions were amended so as to remove the mandatory affiliation of trade unions to a higher-level association of trade unions. The Committee further notes that section 10 of the Law on Trade Unions was amended so as to extend the time limit for the confirmation of a trade union status as a national, sectoral or regional organization from six months to one year. If, after the expiration of one year, the organization has not confirmed it status, its functioning can be suspended for a period of three to six months so as to give it additional time to confirm its status, whereas previously, it was subject to liquidation.

*Law on the National Chamber of Entrepreneurs (NCE).* The Committee had previously urged the Government to amend the Law on the NCE and any other relevant legislation so as to ensure the full autonomy and independence of the free and independent employers' organizations. The Committee recalls, in particular, that the Law calls for the mandatory affiliation to the NCE (section 4(2)). The Committee had further noted the difficulties encountered by the KRRK in practice, which stem from the mandatory membership and the NCE monopoly, and in particular, that the accreditation of employers' organizations by the NCE and the obligation imposed in practice on employers' organizations to conclude an annual agreement (a model contract) with the NCE, meant, for all intents and purposes, that the latter approved and formulated the programmes of employers' organizations and thus intervened in their internal affairs. In this respect, the Committee had noted that there was an agreement to amend section 148(5) of the Labour Code so as to delete reference to the NCE's authority to represent employers in the social dialogue at the national, sectoral and regional levels and that the road map provided for the measures to be taken to address the above concerns culminating with the submission of the draft law to amend various pieces of legislation, including the Law on the NCE to Parliament in November 2018. In this respect, the Committee had noted the Government's indication that the accreditation by the NCE was an internal procedure, which took place on a voluntary basis. The Government stressed that this procedure was not an authorization procedure and did not prevent employers' organizations from operating. Moreover, the compulsory NCE membership was not imposed on associations. The Government reiterated that following the amendment of the Labour Code, as outlined above, the NCE would withdraw from the National Tripartite Commission on Social Partnership and the Regulation of Social and Labour Relations, sectoral commissions (20 sectors) and regional commissions (16 regions). Accordingly, the NCE would no longer be a signatory to the General Agreement between the Government and national associations of employers and workers, sectoral agreements and regional agreements. The Committee had further noted the proposed amendment to section 9 of the Law on the NCE, which would exclude explicitly from the definition of the representative functions of the NCE the right to represent entrepreneurs in the system of social partnership as set out in the Labour Code. The Committee expected that section 148(5) of the Labour Code as well as section 9 of the Law on the NCE would be amended without further delay thereby ensuring that the NCE and its structures at the national, sectoral and regional levels were no longer employers' representatives in social dialogue.

The Committee notes with ***satisfaction*** that section 148 (5) of the Labour Code and section 9 of the Law on the NCE have been amended as previously indicated. The Committee further notes the Government's indication that currently there are 120 employers' associations operating in the country and that at the September 2020 meeting of the Republican tripartite commission on social partnership and regulation of social and labour relations, the employers' associations at all levels were asked to decide on their representatives to the social dialogue bodies at various levels, as well as on the signatories to the tripartite agreements.

Further in this respect, the Committee notes the KRRK's indication that the NCE no longer participates in the social dialogue and will not be signing the 2021-23 national tripartite agreement as this became a prerogative of employers' organizations and that the agreement will be signed by the KRRK. The KRRK indicates that it is being invited by the MLSPP to meetings addressing issues of social dialogue and expresses its trust that the dialogue will be further enhanced in the future. The KRRK provides detailed information on the relationship between the NCE and employers' organizations following legislative

amendments and queries about the impact of the accreditation system on the independence of employers' organizations and their right to participate in the social dialogue processes. The Committee takes due note of the Government's detailed reply on the KRRK observations. The Committee notes, in particular, the Government's detailed explanation of the aims and functioning of the NCE as compared to the role of employers' organizations. The Government stresses that the role of the NCE is linked to business development and promotion of entrepreneurship, whereas the purpose of employers' organizations is to further and defend the rights of their members in the labour and social spheres through the participation in various social dialogue mechanisms, collective bargaining and consultations regarding labour legislation. The Government points out that despite the fact that some of the employers' organizations are accredited in the NCE, they remain independent of each other in their respective roles.

*Article 3. Right of organizations to organize their activities and to formulate their programmes*. The Committee had previously requested the Government to provide information on the status of its proposal to amend section 176(1)(1) of the Labour Code regarding the right to strike. The Committee notes with ***interest*** that the above provision has been amended so as to provide that a strike remains possible with respect to certain "vital" services (electricity, heating, water and gas supply services; aviation, railway, automobile, public and water transport; communication and health services) so long as the necessary minimum level of services, previously agreed upon by the workers' representatives and the local executive authorities, is maintained during the strike.

The Committee recalls that it had previously noted with concern that trade union leaders have been convicted and sentenced in application of section 402 of the Criminal Code (2016), according to which an incitement to continue a strike declared illegal by the court was punishable by up to one year of imprisonment and in certain cases (substantial damage to rights and interest of citizens, mass riots, etc.), up to three years of imprisonment. The Committee notes that this provision has been amended so as to categorize the deeds described in section 402 as delinquent acts (and no longer as criminal acts), and to lower the penalties (both fines and imprisonments) accordingly. The Committee notes, in particular, that the imprisonment for up to one year, and three years in specific cases described above, is to be replaced by an arrest for the duration of up to 50 days and two years of imprisonment, respectively. While welcoming the proposed amendments aimed at reducing the penalties, the Committee is nevertheless of the opinion that simply calling for a strike action, even one declared illegal by the courts, should not result in arrest for up to 50 days and that in general, sanctions should be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed. ***The Committee requests the Government to further review section 402 of the Criminal Code taking into account the above and requests the Government to provide information on all developments in this regard.***

*Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers.* The Committee had previously welcomed the intention to amend the Law on Trade Unions by adding provisions on the right of trade unions to cooperate with international trade union organizations and, jointly with international organizations, to organize and conduct activities, as well as to carry out projects aimed at defending the rights and interests of workers in accordance with the legislation of Kazakhstan. The Committee notes with ***interest*** that section 6 of the Law on Trade Union has been amended to that effect. The Committee notes the Government's reference to its Ordinance No. 177 of 9 April 2018 "On the adoption of a list of international and state organizations, foreign and Kazakhstani non-governmental organizations and funds which can provide grants", which determines 98 international organizations allowed to provide grants to physical and legal persons in Kazakhstan. The Committee welcomes the Government's indication that the MLSPP is ready to examine the possibility of including in that list the ITUC and the International Organisation of Employers if a request to that effect is made. ***The Committee trusts that the list contained in the Ordinance will be amended to include international workers' and employers' organizations and requests the Government to provide information on the measures taken to that end***.

## Kyrgyzstan

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

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) and the Kyrgyzstan Federation of Trade Unions (FPK) received on 16 and 30 September 2020, respectively. The Committee notes that the ITUC and the FPK express their concern at the provisions of the draft Law on Trade Unions, which had been initiated by several members of Parliament and passed the second reading. According to both organizations, the draft law establishes a single trade union system, regulates in detail the organizational detail and functioning of trade unions and sets out broad criteria for dissolution of trade union organizations. Furthermore, the ITUC and the FPK allege reprisals against FPK

leaders and interference in FPK financial activities thereby paralyzing its work. ***The Committee requests the Government to provide its comments thereon.***

In the absence of supplementary information from the Government, the Committee reiterates its comments adopted in 2019 and reproduced below.

The Committee takes note of the draft Law on Trade Unions. It notes with ***concern*** that in addition to regulating in detail the internal functioning of unions by imposing excessive mandatory requirements for trade union by-laws and elections, it imposes a trade union monopoly. The Committee notes the Government's indication that it has prepared, for submission to Parliament, its comments on the draft Law outlining provisions, which, in its opinion, are not in conformity with national legislation and the Constitution and international labour standards. ***The Committee requests the Government to make every effort to ensure that the Law on Trade Unions when adopted is in full conformity with the Convention and to provide information on all developments in this regard. The Committee further requests the Government to ensure that the social partners are fully consulted in the process of adoption of legislation affecting their rights and interests.***

***The Committee reminds the Government of the possibility to avail itself of ILO technical assistance.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Liberia

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

The Committee notes the observations of the National Health Workers' Union of Liberia (NAHWUL), received on 1 October 2020, alleging the Government's failure to grant it legal recognition, which it considers even more detrimental in the context of the COVID-19 pandemic, as well as infringements of the right to strike. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning issues that have been raised since 2012 and which are examined in the present observation, as well as matters that are being dealt with by the Committee on Freedom of Association in the framework of Cases Nos 3081 and 3202.

*Legislative developments.* The Committee recalls that for many years it has been commenting on the need to amend or repeal the following provisions of Title 18 of the Labour Act, which are not in conformity with the Convention: (i) section 4506, prohibiting workers in state enterprises and the public administration from establishing trade unions; (ii) section 4601-A, prohibiting agricultural workers from joining industrial workers' organizations; and (iii) section 4102(10) and (11), providing for the supervision of trade union elections by the Labour Practices Review Board. The Committee notes with ***satisfaction*** that, as indicated by the Government in its report, Title 18 of the Labour Practices Law has been repealed by the Decent Work Act 2015 (the Act) which came into force on 1 March 2016. The Committee wishes to raise the following points with respect to the Act.

*Scope of application.* The Committee notes that section 1.5(c)(i) and (ii) of the Act excludes from its scope of application work falling within the scope of the Civil Service Agency Act. The Committee recalls, in this respect, that in its previous comment, it had noted the Government's indication that the legislation guaranteeing the right of public employees to establish trade unions (the Public Service Ordinance) was being revised with the technical assistance of the Office. The Committee notes that no new information has been provided by the Government in that respect. ***The Committee expects that the revision of the Ordinance will make it possible to give full effect to the Convention in relation to public employees and requests the Government to report any developments in this regard.***

The Committee notes that section 1.5(c)(i) and (ii) of the Act also excludes from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. ***Noting that no information has been provided by the Government on the legislation guaranteeing the right to establish and join organizations to those working on vessels, the Committee requests the Government to indicate how maritime workers, including trainees, are ensured the rights enshrined in the Convention, including any laws or regulations adopted or envisaged covering this category of workers.***

*Article 1 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations.* The Committee notes that section 2.6 of the Act provides that all employers and workers, without distinction whatsoever, may establish and join organizations of their own choosing without prior authorization, and subject only to the rules of the organization concerned. The Committee also notes that section 45.6 of the Act recognizes the right of foreign workers to join organizations. ***The Committee requests the Government to indicate whether, in addition to the right to join organizations, foreign workers are entitled to establish organizations of their own choosing.***

*Article 3. Determination of essential services.* The Committee notes that the National Tripartite Council (established by virtue of section 4.1 of the Act) has the function to identify and recommend to the Minister services that are to be considered essential (section 41.4(a) of the Act). The Committee notes with ***interest*** that essential services are defined in section 41.4 of the Act as services which, if interrupted, would endanger the life,

personal safety or health of the whole or any part of the population. The section also provides that the President shall, upon considering the recommendations of the National Tripartite Council, decide whether or not to designate any part of a service as an essential service and publish a notice of designation of that essential service in the *Official Gazette*. The Committee notes that the final decision on the determination of a service as essential rests with the President, who is neither bound by nor obliged to follow the recommendations of the National Tripartite Council. ***The Committee requests the Government to indicate whether, in determining services which are to be considered essential, the President is bound by the definition of essential services set out in section 41.4 of the Act. The Committee also requests the Government to provide information on how section 41.4 has operated in practice with respect to the designation of essential services.***

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

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

The Committee notes the observations of the National Health Workers' Union of Liberia (NAHWUL), received on 1 October 2020, containing allegations of violations of trade union rights in the context of the COVID-19 pandemic and which are considered under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2020, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 concerning issues examined in the present observation as well as matters that are being dealt with by the Committee on Freedom of Association in the framework of Cases Nos 3081 and 3202.

*Legislative developments.* The Committee notes the Government's indication that the Decent Work Act adopted in 2015 came into force on 1 March 2016 and that it ensures the rights enshrined in the Convention. The Committee recalls that for many years it has been commenting on the need to adopt legal provisions guaranteeing: (i) adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions; (ii) adequate protection for workers' organizations against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and (iii) the right to collective bargaining for employees in state-owned enterprises and public servants who are not engaged in the administration of the State.

*Scope of the Convention.* The Committee notes that section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 (the Act) excludes from its scope of application work falling within the scope of the Civil Service Agency Act. The Committee recalls, in this respect, that in its previous report, the Government had indicated that the legislation guaranteeing the right of collective bargaining of public servants and employees in state enterprises (Ordinance on the public service) was under revision with the technical assistance of the Office. The Committee notes that no information has been provided by the Government in that respect. ***The Committee expects that the revision of the Ordinance on the public service will make it possible to give full effect to the Convention in relation to employees in state enterprises and public servants not engaged in the administration of the State and requests the Government to report any developments in this regard.***

The Committee notes that section 1.5(c)(i) and (ii) of the Act also excludes from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. ***Noting that no information has been provided by the Government on legislation guaranteeing the right of collective bargaining to maritime workers, the Committee requests the Government to indicate how the rights enshrined in the Convention apply to these workers, including any laws or regulation, adopted or envisaged, covering them.***

*Article 1 of the Convention. Adequate protection against anti-union discrimination.* The Committee recalls that for many years it has been requesting the Government to take measures to introduce in the legislation provisions that would ensure an effective protection against anti-union discrimination. The Committee notes that section 2.6 of the Act provides that the right to form organizations and to bargain collectively are fundamental rights and that section 2.7 prohibits discrimination in the exercise of the rights conferred by the Act. The Committee also notes that section 2.11 of the Act provides for the protection of workers' freedom of association (stipulating, inter alia, that no person may prejudice or threaten to prejudice a worker because of past, present or anticipated membership of an organization of workers) and that section 2.12 of the Act provides for the protection of employers' freedom of association. The Committee notes that sections 2.11 and 2.12 provide that they operate in addition to, and to the fullest extent possible together with section 2.7 of the Act, under which discrimination overall is prohibited. The Committee notes that, while the Act does not expressly prohibit termination of employment based on anti-union discrimination, section 14.8 prohibits termination because of the exercise of rights conferred by the Act. It also notes that complaints for the violation of the rights guaranteed in the Act can be lodged to the Ministry and that the Ministry's decisions can be appealed before the Labour Court (Chapters 9 and 10 of the Act). ***Emphasizing the importance of ensuring effective protection against acts of anti-union discrimination and of providing for sufficiently dissuasive sanctions in this regard, the Committee requests the Government to provide further information on the sanctions applied in cases of acts of anti-union discrimination. It also requests the Government to provide statistics on the number of cases of discrimination examined, the duration of the procedures and the type of penalties and compensation ordered.***

*Article 2. Adequate protection against acts of interference.* The Committee recalls that for many years it has been requesting the Government to take measures to introduce in the legislation provisions guaranteeing adequate protection for workers' organizations against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions. The Committee notes with ***regret*** that

the Act still contains no specific provisions on protection against interference. The Committee recalls that under the terms of *Article 2* of the Convention, workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration (see the 2012 General Survey on the fundamental Conventions, paragraph 194). ***The Committee requests the Government to take the necessary measures to introduce in the legislation a prohibition of acts of interference as well as rapid appeal procedures and dissuasive sanctions against such acts. It requests the Government to report on any development in this regard.***

*Article 4. Promotion of collective bargaining.* The Committee notes that section 37.1(a) of the Act provides that trade unions that represent the majority of the employees in an appropriate bargaining unit are able to seek recognition as exclusive bargaining agents for that bargaining unit. It also notes that a trade union that no longer represents the majority of the employees in the bargaining unit must acquire majority within three months, if not, the employer shall withdraw recognition from that trade union (section 37.1(k)). The Committee recalls that while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, it considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members (see General Survey, op. cit., paragraph 226). ***The Committee requests the Government to indicate whether, if no union represents the majority of the employees in an appropriate bargaining unit, the minority unions in the same unit enjoy collective bargaining rights, at least on behalf of their members.***

*Settlement of disputes affecting national interest*. The Committee notes that section 42.1 of the Act provides that if the President considers it in the national interest, the President may: (i) request the Minister to appoint a conciliator to conciliate any dispute, or potential dispute, between employers and their organizations on the one hand and employees and their trade unions on the other hand; or (ii) in consultation with the National Tripartite Council, appoint a panel of persons representing the interests of employers, employees and the State to investigate any industrial conflict or potential conflict for the purpose of reporting and making recommendations to the President. ***Recalling that, pursuant to Article 4 of the Convention, the settlement of collective disputes must be consistent with the promotion of free and collective bargaining, the Committee requests the Government to provide additional information with respect to the prerogatives under section 42.1 of the Act, and to indicate the extent to which this provision provides the parties with complete freedom of collective bargaining and does not alter the principle of voluntary arbitration.***

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



## Netherlands

### Sint Maarten

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

The Committee notes the observations of the Sint Maarten Hospitality and Trade Association (SHTA) received on 30 September 2020, which allege that the Chamber of Commerce and Industry (COCI), a governmental agency, has established the Soualiga Employer Association (SEA), an umbrella organization to represent employers, including at the tripartite Socio Economic Council (SER). The SHTA alleges that through the COCI and the SEA, the Government is attempting to establish an employer representative organization that is more in line with the Government's position and does not reflect actual diligent representation and that this appears to be an attempt to marginalize the existing employer representative groups. ***The Committee requests the Government to provide its comments on these serious allegations.***

***The Committee also requests the Government to reply in full to other pending comments under the Convention adopted in 2017.***

## Pakistan

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

The Committee takes note of the observations of the International Transport Workers' Federation (ITF) received on 2 July 2020 denouncing anti-union measures by the Pakistan International Airlines (PIA), including in May 2020 the unilateral de-recognition of the Pakistan Airline Pilots' Association (PALPA) and other employees' associations in the company, as well as the termination of all working agreements with immediate effect. According to the ITF, the airline company argued their non-legal status as collective bargaining agents under the Industrial Relations Act, and the situation is characterised by the repression against the expression of any worker concerns. ***The Committee requests the Government to provide its comments on these serious allegations.***

***The Committee also requests the Government to reply in full to other pending comments under the Convention adopted in 2018.***

***[The Government is asked to reply in full to the present comments in 2021.]***

# Papua New Guinea

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Legislative matters.* In its previous comments, the Committee had noted the Government's indication that the new Industrial Relations Bill (IRB 2014) was undergoing a vetting process at the Government Executive Committee and the Central Agency and Consultative Council to harmonize it with other relevant legislation and that the revised Bill should be presented to Cabinet before November 2016 or early 2017 and consultations on the matter should be held in the national Tripartite Consultative Council. ***Noting that the last information sent by the Government through an anticipated report dates back to 5 January 2017 and that its 2018 report was not received, the Committee hopes that the Government will provide in its next report information on the outcome of these consultations and whether the IRB 2014 has been enacted.***

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination.* The Committee had previously requested the Government to provide information on the measures taken to ensure effective implementation of the prohibition of anti-union discrimination in practice and to provide statistics on the number of anti-union discrimination complaints brought before the competent authorities, their follow-up, sanctions and remedies imposed. ***Noting that the Government did not provide specific information in this regard, the Committee reiterates its previous request.***

*Article 4. Promotion of collective bargaining. Power of the Minister to assess collective agreements on the grounds of public interest.* The Committee had previously requested the Government to take the necessary measures to bring section 50 of the Industrial Relations Bill (2011) into conformity with the principle that the approval of a collective agreement may only be refused if it has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. While observing once again that the Government does not provide a copy of the Bill, the Committee takes note of the Government's indication that section 50 of the IRB 2014 has been amended and that under the revised version the Attorney General is not entitled to appeal against the making of an award on the grounds of public interest.

*Compulsory arbitration in cases where conciliation between the parties has failed.* While recalling that it had noted the conformity of section 78 of the IRB 2014, as described by the Government, with the Convention, the Committee notes that the Government has still not clarified the content of section 79 of the IRB 2014.

***The Committee trusts once again that the Government, taking into account the Committee's comments, will ensure the full conformity of any revised legislation with the Convention. In this regard, the Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes and requests it to provide detailed information on the process of revision of the Industrial Relations Bill.***

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

# Philippines

## Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019 and 15 September 2020, of the International Transport Workers' Federation (ITF) received on 3 September 2019 and of Education International (EI) received on 20 September 2019, referring to matters addressed below, as well as the Government's detailed reply thereto. The Committee also notes the joint observations of EI, the Alliance of Concerned Teachers (ACT) and the National Alliance of Teachers and Office Workers (SMP-NATOW) received on 1 October 2020, denouncing extra-judicial killings of trade unionists and other serious violations of civil liberties, as well as challenges in the application and implementation of the right to freedom of association. ***The Committee requests the Government to provide its reply thereto.***

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee noted the discussion that took place in the Conference Committee on the Application of Standards (Conference Committee) in June 2019 concerning the application of the Convention. The Committee observed that the Conference Committee called upon the Government to: (i) take effective measures to prevent violence in relation to the exercise of workers' and employers' organizations legitimate activities; (ii) immediately and effectively undertake investigations into the allegations of violence in relation to members of workers' organizations with a view to establishing the facts, determining culpability and punishing the perpetrators; (iii) operationalize the monitoring bodies,

including by providing adequate resources, and provide regular information on these mechanisms and on progress on the cases assigned to them; and (iv) ensure that all workers without distinction are able to form and join organizations of their choosing in accordance with *Article 2* of the Convention. The Conference Committee also called on the Government to accept a high-level tripartite mission before the next International Labour Conference. While noting the Government's request to defer the high-level tripartite mission, the Committee expressed the hope that the Government would take the necessary arrangements to enable the high-level tripartite mission requested by the Conference Committee to take place before the next International Labour Conference. The Committee notes that, in its supplementary report, the Government indicates that it addressed the points raised by the Conference Committee in its 2019 report, that it continues to make reforms and to take measures with the social partners to ensure conformity with ratified labour standards and that it stands ready to accept an ILO mission in the coming years but requires further clarification as to what constitutes "effective measures" to prevent violence against workers; what constitutes "immediate and effective investigation" that would ensure compliance with the Convention; and what measures the Government should take to satisfy the Conference Committee's request to ensure workers' right to self-organization. The Committee notes the Government's request for guidance on giving effect to the conclusions of the Conference Committee. The Committee trusts that its past and present detailed comments will provide useful guidance, in consultation with the social partners, in determining appropriate and effective measures to ensure compliance with the Convention; and that the high-level tripartite mission requested by the Conference Committee will be able to provide specific guidance on giving effect to the Conference Committee's conclusions. ***The Committee therefore trusts that, as soon as the situation so permits, the Government will receive a high-level tripartite mission, as requested by the 2019 Conference Committee. The Committee also reminds the Government that, in the meantime, it can avail itself of the technical assistance of the Office, including in order to elaborate a plan of action, detailing progressive steps to be taken to achieve full compliance with the Convention.***



### Civil liberties and trade union rights

*2016 ITUC observations.* The Committee notes the Government's reply to earlier observations from the ITUC, providing an update on the status of the investigations into the alleged assassination of two trade union leaders in 2016 and clarifying that the activities conducted in Compostela Valley, Mindanao were visits under the Community Support Programme of the Armed Forces of the Philippines (AFP). The Committee further notes the Government's general statement that the policy and programme reforms on freedom of association and collective bargaining implemented by the Government contributed to reduced incidence of labour disputes and labour related violence since 2011 and that this decline can also be attributed to the continuous efforts towards raising awareness and strengthening the capacity of all relevant Government institutions.

*New allegations of violence and intimidation.* The Committee notes, however, with ***deep concern*** the grave allegations of violence and intimidation of trade unionists communicated by the ITUC and EI in 2019, including: (i) assassination of 23 trade union leaders in 2018 and 2019, as well as several attempted assassinations documented by the Center for Trade Union and Human Rights (CTUHR); (ii) death threats targeting trade union leaders in the education sector in January and February 2019, as well as profiling, surveillance, harassment and red-tagging by the Philippine National Police (PNP) and AFP officials; (iii) violent dispersal of a number of workers' strikes and protests in Marilao, Bulacan in June and July 2018, resulting in serious injuries, arrests, multiple charges (later dropped) and a week-long detention; (iv) violent dispersal of a strike by workers of a fruit-exporting company in Compostela Town in Compostela Valley in October 2018 and the murder of a trade union activist; (v) assassination of nine sugar cane workers during a protest at Hacienda Nene in Sagay, Negros Occidental; and (vi) suspected arson attack of a labour leader's home during a strike in a banana-packing plant in December 2018. The Committee further notes with ***deep concern*** the serious allegations of violence reported by the ITUC in its latest communication, including: (i) extra-judicial killings of two trade unionists in November 2019 and August 2020; (ii) joint military and police raids against trade unions, civil society groups, human rights activists and women's groups in Manila and Bacolod City in October 2019, the arrest of 57 people and the filing of false criminal charges against many of them; (iii) deaths threats, persecution, fabricated charges and profiling of ACT members, as well as an attempted murder against a trade unionist in October 2019 and harassment of two union leaders by the military in July 2020; and (iv) union busting and dispersal of a peaceful demonstration at Coca Cola company in San Fernando, Pampanga province in April 2020, as well as red-tagging of the union at the plant in Bacolod City and threats against a union leader in October 2019. The Committee notes that, in its supplementary report, the Government provides information on the measures taken to address the above allegations from 2019 and 2020, including on any issuing of guidelines, investigating, monitoring or judicial proceedings initiated in relation thereto. ***The Committee trusts that all of the above allegations will be duly investigated and that any pending proceedings will be concluded without delay, so as to establish the facts, determine culpability and punish the perpetrators, with the aim of effectively preventing and combating impunity.***

The Committee further observes with ***deep concern*** the serious allegations of violence reported by EI, the ACT and the SMP-NATOW in their 2020 observations, in particular: (i) intimidation of NATOW leaders, as well as arrests and branding of unionists as part of the communist movement; (ii) extra-judicial killings of eight unionists in the education sector and two attempted murders between July 2019 and August 2020; (iii) 18 incidents of death threats, red-tagging, intimidation and harassment of ACT leaders; (iv) 36 documented cases of illegal police profiling; and (v) false criminal charges and four cases of long-term detention of ACT members. While noting that some aspects of these allegations have been incorporated in the 2020 ITUC communication and thus briefly addressed by the Government in its reply thereto, the Committee observes that the joint observations of EI, the SMP-NATOW and the ACT contain more specifics as to the concrete incidents, allowing the Government to provide detailed replies in this regard. ***The Committee therefore requests the Government to provide a detailed reply to these serious allegations, including on any investigating or other procedures initiated, so as to establish the facts, determine culpability, and punish the perpetrators, and trusts that it will continue to take appropriate measures, adapted to national circumstances, to prevent and promptly address any future allegations of violence and intimidation of trade unionists.***

*Pending cases of alleged killings of trade union leaders.* The Committee previously requested the Government to provide detailed information on the progress achieved on the prosecution and judicial investigations relating to three cases of alleged killings of trade union leaders previously reported by the ITUC. The Committee notes the update provided by the Government that the case of Rolando Pango should be reviewed by regional police for possible refiling, that the case of Florencio "Bong" Romano has not yet been deliberated on due to the non-reactivation of the Administrative Order (AO) 35 Inter-Agency Committee (IAC) and that in the case of Victoriano Embang, a case of murder was filed and an arrest warrant issued against suspects who are at large. In its supplementary report, the Government reiterates that the three cases are currently being handled and investigated through the regular process of criminal investigation and prosecution but clarifies that progress in this regard may be affected by a number of circumstances, such as the lack of material witnesses and evidence. ***While taking due note of the Government's indication, the Committee regrets to observe that even after numerous years, none of these cases have yet been fully concluded and expresses the firm hope that the investigations into the serious allegations of killings of the above trade union leaders, as well as the ongoing judicial proceedings in this regard, will be completed in the very near future with a view to shedding full light, at the earliest date, on the facts and the circumstances in which such actions occurred and, to the extent possible, determining responsibilities, punishing the perpetrators and preventing the repetition of similar events.***

*Monitoring mechanisms.* In its previous comment, the Committee requested the Government to provide detailed information on the progress made by the Tripartite Validating Teams, the National Tripartite Industrial Peace Council Monitoring Body (NTIPC-MB) and other relevant bodies in ensuring the collection of the necessary information to bring the pending cases of violence to the courts and the outcome in this regard. The Committee notes the Government's assertion that: (i) the existing mechanisms remain steadfast in ensuring expeditious investigation, prosecution and resolution of pending cases concerning alleged harassment and assassination of labour leaders; (ii) for example, after the alleged extra-judicial killing (EJK) of a trade unionist Dennis Sequeña was endorsed by the IAC, the Department of Justice ordered the set-up of a special investigating team to conduct the investigation and case build-up; (iii) a notable advancement with regard to the IAC was the appointment of labour representatives nominated and selected from the NTIPC as observers in its proceedings; and (iv) the existing mechanisms monitor 72 cases of EJK and attempted murders and have also been mobilized to validate and gather information on the 43 cases of alleged murders of unionists and union leaders, as identified by the CTUHR and discussed at the Conference Committee. The Committee welcomes the information provided by the Government to the Conference Committee that, in the spirit of social dialogue and tripartite engagement, trade unions' and employers' representatives were enlisted as deputized labour inspectors (as of January 2019, there were 241 deputized social partners) and that 16 Regional Tripartite Monitoring Bodies (RTMBs) across the country were ready to be mobilized in case of need, bringing about an immediate response and concrete appropriate action.

The Committee observes, however, that the Government representative at the Conference Committee recognized that the mandates, structures and internal rules of the monitoring mechanisms need to be further revisited. According to the Government representative, the IAC, for instance, needed strengthening by ensuring openness and transparency on the prosecution and movement of EJK cases, adopting inclusive criteria in the screening of these cases, relatedness to the exercise of freedom of association, capacity-building on freedom of association and on the collection of physical and vital forensic evidence to reduce heavy reliance on testimonial evidence. The Committee ***regrets*** to observe that the IAC has not yet reconvened and that even though members of the Tripartite Validating Teams may request security assistance from the PNP and the AFP, due to the risks and dangers involved for them, this initiative has not yet been put into practice. The Committee further observes the concerns raised by the ITUC and the ITF with regard to the criteria used by the IAC to determine extra-judicial killings, the lack of effective

monitoring mechanisms and of resources to investigate and prosecute all complaints of EJK of trade unionists and the need to rapidly identify perpetrators of violence and bring them to justice to combat impunity.

The Committee ***regrets*** that despite a number of initiatives undertaken, there continue to be numerous allegations of violence perpetrated against trade union members for which the presumed perpetrators have not yet been identified and the guilty parties punished. It notes in this regard the Government's acknowledgment that conviction has indeed been the recurring and imposing challenge due to the amount of evidence required to convict perpetrators of a crime and that there is a need for major support on this aspect. The Committee observes that the Conference Committee also noted with concern the numerous allegations of murders of trade unionists and anti-union violence, as well as the allegations regarding the lack of investigation in relation to these allegations. ***In light of the above, the Committee requests the Government to take the necessary measures to ensure that all of the existing monitoring mechanisms can function properly and efficiently, including by allocating sufficient resources and staff, so as to contribute to effective and timely monitoring and investigation of allegations of EJK and other forms of violence against trade union leaders and members. In particular, the Committee expects that, despite the challenges faced, the Tripartite Validating Teams will be established in practice and the IAC will reconvene in the near future. The Committee requests the Government to continue to provide detailed information on the progress made by the existing monitoring mechanisms in ensuring the collection of the necessary information to bring the pending cases of violence to the courts.***

*Measures to combat impunity.* The Committee previously requested the Government to provide detailed information on the steps taken to combat impunity, provide sufficient witness protection and build the capacity of the relevant State actors in the conduct of forensic investigation. The Committee welcomes the detailed information provided by the Government to the Conference Committee relating to numerous trainings, capacity-building activities, seminars and lectures conducted to enhance the knowledge and capacities of various State and non-State actors, including the police, military, prosecutors, enforcers, relevant actors in criminal investigation, local chief executives and social partners on international labour standards, the principles and application of the Convention, as well as on criminal investigation. The Committee also welcomes additional steps taken by the Government in this regard: elaboration of a workers' training manual and of an e-learning module on freedom of association as part of the Labour and Employment Education Services (LEES); call by the Department of Labour and Employment (DOLE) on the PNP and AFP to ensure the observance of the guidelines on the conduct to be observed during the exercise of workers' rights and activities; AFP and PNP commitment to integrating the Labour Code and the guidelines in their education programme; and review of the guidelines for amendment and updating. Finally, the Committee observes the Government's explanation that reliance on testimonial evidence in the prosecution of criminal cases remains indispensable, that forensic evidence is supplemental in character and that programmes should be conducted, together with the ILO, to enhance the capacity of the concerned agencies in gathering and handling forensic evidence. The Government representatives also informed the Conference Committee about a strategic planning conducted in March 2019 regarding the provision of adequate assistance and protection to witnesses under the Witness Protection Programme. The Committee further notes the supplementary information provided by the Government, indicating that exploratory talks were ongoing with the ILO Country Office on possible collaboration for future projects and capacity-building on human and trade union rights for all concerned State actors but due to the immense impact of the COVID-19 pandemic, such initiatives have been stalled. It states that, in view of the precautionary health and safety measures and protocols that must now be observed, the Government together with the Country Office will have to reconsider, review and re-design previous training and capacity-building programmes to incorporate the health and safety standards. ***Welcoming the above initiatives and measures undertaken, and duly noting the need to ensure pertinent health and safety measures in the context of the current pandemic, the Committee encourages the Government to continue to provide regular and comprehensive training to all concerned State actors in relation to human and trade union rights, as well as on the collection of evidence and the conduct of forensic investigation, with the aim of combating impunity, increasing the investigative capacity of the concerned officials and providing sufficient witness protection. The Committee invites the Office to provide any technical assistance required in this regard.***

*Review of operational guidelines of monitoring mechanisms.* The Committee previously requested the Government to inform it of developments with regard to the review and updating of the operational guidelines of the investigating and monitoring bodies, as part of the National Action Plan under the DOLE-ILO-EU-GSP+ Development Cooperation Project. The Government indicated to the Conference Committee that one of the outcomes of the project is the review of the existing mechanisms to address cases of violations of workers' civil liberties and trade union rights. Following the review of the operational guidelines and process structures of the NTIPC-MB, the RTMBs, the IAC and the National Monitoring Mechanisms (NMM), gaps and issues in the operationalization of these mechanisms have been identified, as well as problem areas encountered by investigative agencies, such as the PNP, the Commission on Human Rights (CHR) and the AFP Human Rights Officer. According to the Government, recommendations

issued to help address the identified gaps and blockages will be taken up by the concerned agencies for consideration and possible implementation. ***Welcoming this information, the Committee trusts that the recommendations addressing the current gaps and blockages will be rapidly implemented so as to contribute to swift and efficient investigation of pending labour-related cases of EJK and other violations.***

*Trade union rights and civil liberties. Anti-Terrorism Act.* The Committee notes the concerns expressed by the ITUC over the adoption of the Anti-Terrorism Act, 2020 which it alleges contains a broad definition of terrorism, aims at silencing dissenting voices and further entrenches State repression and hostility against workers and trade unionists. The Committee notes that in reply, the Government states that the Anti-Terrorism Act does not, in any way, seek to curtail workers' right to freedom of association but aims to address the root causes of terrorism through a comprehensive approach and by all legal means, while safeguarding and upholding basic rights and fundamental liberties enshrined in the Constitution, including the right to freedom of association. ***In view of the Government's indication, the Committee expects that the Anti-Terrorism Act, 2020 will not be used in any way to curtail legitimate trade union activities or to justify repression against trade unionists, and requests the Government to provide information on any aspects of implementation of the Act that affect trade unionists or trade union activities.***

## Legislative issues

*Labour Code.* In its previous comments, the Committee had been noting the numerous amendment bills pending before Congress over many years and in various forms with a view to bringing the national legislation into conformity with the Convention. The Committee notes the Government's assertion that, in coordination with the social partners, it has sought to address emerging labour, economic and social concerns affecting workers' rights and exercise thereof and has achieved substantial progress in its commitments towards the promotion and protection of freedom of association rights, including a multitude of actions and reforms undertaken. On the other hand, the Committee notes that, according to the ITUC, there appears to be an absence of good faith by the Government to adopt the necessary measures that would bring the legislation into compliance with the Convention. The Committee further observes that the Conference Committee regretted that the reforms introduced to address some of the issues were not adopted and urged the Government to bring the law into compliance with the Convention. The Committee on Freedom of Association also trusted that the Government would make serious efforts to bring the Labour Code into conformity with the principles of freedom of association and referred these legislative aspects to this Committee (see 391st Report, October 2019, Case No. 2745, paragraph 50 and 392nd Report, October 2020, Case No. 2716, paragraph 153). ***The Committee expects that the Government will make serious efforts to align the Labour Code and other pieces of national legislation with the Convention on the following matters.***

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing, without previous authorization. Foreign nationals.* In its previous comments, the Committee had requested the Government to provide information on the progress made in relation to amendments to sections 284 and 287(b) of the Labour Code so as to grant the right to organize to all workers residing in the Philippines. The Committee notes, from the supplementary information provided by the Government that House Bill No. 2629 (allowing foreign nationals to exercise their right to self-organization) was filed in July 2019 and is pending with the House of Representatives Committee on Labour and Employment for consideration. ***While taking note of the pending bill, the Committee regrets the absence of any substantial progress in the adoption of the pertinent legislation and expects that the necessary amendments will be adopted in the near future and that they will ensure that any individuals residing in the country, whether or not they have a residence or a working permit, can benefit from the trade union rights provided by the Convention. The Committee requests the Government once again to provide information on progress made in this respect and to transmit copies of the amending legislation once adopted.***

*Other categories of workers excluded from the guarantees of the Convention.* The Committee had previously pointed to the lack of trade union rights for certain categories of workers, including workers in managerial positions or with access to confidential information, firefighters, prison guards and other public sector workers, as well as temporary or outsourced workers and workers without employment contract (sections 253 and 255 of the Labour Code, Rule I Section 4 of Executive Order No. 180, 1987 and Rule II Section 2 of the Amended Rules and Regulations Governing the Exercise of the Right to Government Employees to Organize, 2004). The Committee notes the Government's indication, from the supplemental information provided, that the right to self-organization may be exercised by all employees in commercial, industrial and agricultural enterprises, as well as in religious, charitable, medical and educational institutions and that the coverage extends to ambulant, intermittent, itinerant, self-employed and rural workers, as well as those without any definite employer. The Government reiterates that for the purposes of exercising the right to organize, the first parameter to take into account is whether or not a worker is covered by an employer–employee relationship. It states that under section 253 of the Labour Code, only employees may join trade unions for purposes of collective bargaining, whereas ambulant, intermittent,

itinerant, self-employed and rural workers, as well as those without any definite employer may only form labour organizations for their mutual aid and protection. In its supplementary report, the Government reiterates this distinction and asserts that nothing in the law or jurisprudence prevents temporary or outsourced workers and workers without an employment contract from exercising the right to form and join trade unions. Concerning workers in managerial positions, the Committee notes that under section 255 of the Labour Code, they are not eligible to join, assist or form any labour organization but observes that, according to the Government, while workers in managerial positions may not form or join labour organizations so as to avoid any conflict of interest or company-dominated unions, they may form and join any organizations for mutual aid and protection or for any legitimate purpose other than collective bargaining. Finally, the Committee observes that firefighters and prison guards are excluded from the scope of application of the Executive Order No. 180 (Rule I, section 4), which provides guidelines for the exercise of the right to organize of government employees but notes the Government's indication that firefighters and prison guards may exercise the right to freedom of association but not to the extent of forming, joining or assisting labour organizations for purposes of collective bargaining. While taking due note of the above information, in particular on the right to organize for purposes other than collective bargaining and to form or join organizations other than labour organizations for mutual aid and protection, the Committee observes that it remains unclear whether or to what extent this form of organization provides to all of the above categories of workers, both in law and in practice, the full guarantees of freedom of association as set out in the Convention and also observes the concerns expressed by the ITUC in this regard.



As to the pending legislative amendments, the Committee notes the Government's indication, in its supplementary report, that House Bill No. 2621, which seeks to address the gaps in public sector labour relations, particularly on the protection of the right to organize, and House Bill No. 2846, which aims at codifying all laws and relevant issuances governing the civil service into a single, comprehensive statute, were filed in the 18th Congress in July 2019 and are currently with the House Committee on Civil Service and Professional Regulation. The Government also informs that House Bill No. 7036 (strengthening the security of tenure of workers) was further consolidated and submitted to the House Committee on Labour and Employment for consideration. This bill seeks to: (i) protect workers from labour-only contracting by allowing the labour sector to express concerns on contracting certain jobs and the employers to present the realities of their business operations; and (ii) simplify the classification of workers to regular and probationary, with project and seasonal employees being classified as regular workers for the duration of their employment, while all other forms of employment are strictly prohibited. ***Taking due note of the above information and the pending legislative bills and recalling that the legislative reform addressing any potential gaps in the right to organize of the above-mentioned categories of workers has been pending for a number of years, the Committee urges that any legislative amendments currently pending on the issue be adopted without delay so as to ensure that, should this not yet be the case, all workers, with the sole exception of the armed forces and the police, including those in managerial positions or with access to confidential information, firefighters, prison guards and other public sector workers, as well as temporary or outsourced workers and workers without employment contracts, are able to form and join the organizations of their own choosing to defend their occupational interests, and thus benefit from the full guarantees provided by the Convention. The Committee requests the Government to transmit copies of the amending legislation once adopted and reminds the Government that it can avail itself of the technical assistance of the Office, if it so desires.***

*Registration requirements.* The Committee had previously referred to the need to amend section 240(c) of the Labour Code so as to lower the excessive minimum membership requirement for forming an independent union (20 per cent of all the employees in the bargaining unit where the union seeks to operate). The Committee notes, from the supplementary information that, according to the Government, while the current 20 per cent requirement is required for an independent union to acquire legal personality and to be entitled to the rights and privileges granted by the law to legitimate labour organizations, there is no required number of workers in an establishment before a union can be formed. It also clarifies that section 241 of the Labour Code makes registration easier through "chartering", where any duly registered federation or national union can, by issuing a charter certificate, directly create a local chapter entitled to all the rights and privileges of a legitimate labour organization without the need to comply with the registration requirements in section 240(c) of the Labour Code. The Committee understands from the Government's indication that although a union may be formed by any number of workers at an enterprise, it will not be considered as a legitimate organization and will thus not have a legal personality or benefit from any other rights stemming from the law (right to own property, sue in court, etc.), unless it represents 20 per cent of the workforce at the unit where it is active and obtains a certificate of registration. In this regard, the Committee notes the Government's indication that House Bill No. 6023, which seeks to reduce the minimum membership requirement for registration of independent unions from 20 to 5 per cent, institutionalize online registration, decentralize the registration process and ensure a one-day process cycle time, was filed in January 2020 and is pending consideration with the House of Representatives Committee on Labour and Employment. ***Observing that the Government has***

***been referring to amending legislation for several years now, the Committee firmly expects that the necessary amendments will be adopted in the very near future, reducing the minimum membership requirement for registration to a reasonable level so that the establishment of independent legitimate organizations is not hindered. The Committee requests the Government to provide information on progress made in this respect and to transmit copies of the amending legislation once adopted.***

*Article 3. Right of workers' organizations to organize their activities and to formulate their programmes without interference by the public authorities. Essential services.* The Committee previously requested the Government to provide information on the legislative progress made to ensure that Government intervention leading to compulsory arbitration is limited to essential services in the strict sense of the term (amendments to section 278(g) of the Labour Code). The Committee notes from the supplementary information provided by the Government that House Bill No. 2632 (aimed at limiting Government intervention leading to compulsory arbitration to essential services in the strict sense of the term, and even to prohibiting the issuance of injunctions in labour cases) was filed in July 2019 and is pending consideration with the House of Representatives Committee on Labour and Employment. The Committee also notes that the Government reiterates information provided previously on the issuance in 2013 of Order No. 40-H-13 (an implementing guideline for section 278(g) of the Labour Code), which harmonizes the list of industries indispensable to the national interest with the essential services criteria of the Convention in the exercise of assumptive power of the Secretary of Labour and Employment over labour disputes, strikes and lockouts, and which should help facilitate the passage in Congress of the respective bill. The Committee recalls that the industries referred to in Order No. 40-H-13 include the hospital sector, electric power industry, water supply services (except small water supply services, such as bottling and refilling stations) and air traffic control; and that other industries may be included upon recommendation of the NTIPC. It observes in this regard that, according to the ITUC, the Government still retains an expansive instead of a strict and limited definition of essential services. ***Observing that the Committee on Freedom of Association has also previously addressed this issue (see 390th Report, June 2019, Case No. 2716, paragraph 78; 391st Report, October 2019, Case No. 2745, paragraph 51 and 392nd Report, October 2020, Case No. 2716, paragraph 153) and recalling that the Government has been referring to legislative amendments to section 278(g) for numerous years, the Committee expects that these legislative amendments will be adopted in the very near future and that they will ensure that Government intervention leading to compulsory arbitration is limited to essential services in the strict sense of the term. The Committee requests the Government to report progress in this regard and to transmit copies of the amending legislation once adopted.***

*Penal sanctions for participation in a peaceful strike.* In its previous comments, the Committee firmly trusted that sections 279 and 287 of the Labour Code would be amended in the very near future to ensure that no penal sanctions are imposed against a worker for having carried out a peaceful strike, even if non-compliant with bargaining or notice requirements. The Committee notes that, according to the Government, current sections 279 and 287 of the Labour Code do not impose penal sanctions on workers for participating in or carrying out a peaceful strike but merely list and penalize activities which are prohibited during a strike or lockout. In its supplementary report, the Government also informs that House Bill No. 2631 (strengthening the workers' right to strike) was filed in July 2019 and is pending with the House of Representatives Committee on Labour and Employment for consideration. The bill aims to: (i) authorize a group or representatives of workers to file the notice of, and to go on, strike; and (ii) remove dismissal and imprisonment as penalty for violation of orders, prohibitions or injunctions issued by the Secretary of Labour and for direct participation by union officers in an illegal strike. The Committee further observes the allegations raised by the ITF, indicating that in addition to sections 279 and 287 of the Labour Code, the 1946 Commonwealth Act has also been used to impose penal sanctions against an organizer of a peaceful strike. ***Regretting the absence of any substantial progress in the adoption of the previously announced amendments to sections 279 and 287 of the Labour Code, the Committee expects the Government to take the necessary measures to ensure that these amendments are adopted in the near future and that any other necessary changes are made in national laws or regulations to ensure that no penal sanctions are imposed against a worker for having carried out a peaceful strike, even if non-compliant with bargaining or notice requirements. The Committee requests the Government to provide information on the progress made, as well as its reply to the ITF allegations.***

*Foreign assistance to trade unions.* The Committee had previously referred to the need to amend section 285 of the Labour Code, which subjected the receipt of foreign assistance to trade unions to prior permission of the Secretary of Labour. The Committee notes the Government's clarification that while section 285 of the Labour Code regulates foreign assistance to trade unions, the burden of obtaining an authorization is not on the union but on the foreign entity which provides the assistance. The Committee further observes, from the supplementary information provided by the Government, that House Bill No. 2629 was filed in July 2019 and is pending with the House of Representatives Committee on Labour and Employment for consideration. The bill aims to lift the regulation on foreign assistance by allowing foreign individuals or entities to give any donation, grant or other assistance to any labour organization, group of workers or auxiliary thereof without prior approval of the Secretary of Labour. ***Recalling that the***

***Government has been referring to amending legislation for several years now, the Committee firmly expects that the proposed legislative amendments removing the need for Government permission for foreign assistance to trade unions will be adopted in the very near future. It requests the Government to provide information on any progress made in this regard and to transmit copies of the amending legislation once adopted.***

*Article 5. Right of organizations to establish federations and confederations.* The Committee previously referred to the need to lower the excessively high requirement of ten union locals or chapters duly recognized as collective bargaining agents for the registration of federations or national unions set out in section 244 of the Labour Code. The Committee notes from the supplementary information provided by the Government that House Bill No. 6023, which seeks to lower the requirement for registration of federations and confederations from 10 to 5 local chapters was filed in January 2020 and is pending consideration with the House of Representatives Committee on Labour and Employment. ***Observing that the revision of the Labour Code on this point has been pending for several years, the Committee firmly expects that the legislative amendments lowering the excessively high requirement for registration will be adopted in the very near future and requests the Government to provide information on the progress achieved.***

*Other legislative matters.* The Committee notes that the Committee on Freedom of Association referred a number of legislative aspects to this Committee, in particular relating to: (i) the progress made in the adoption of the Bill concerning enforced and involuntary disappearances, which the Committee had considered could represent an important step in acknowledging the existence of enforced disappearances and ensuring significant and dissuasive sanctions (see 392nd Report, October 2020, Case No. 2528, paragraph 136); and (ii) the progress made with regard to the previously announced review by the Supreme Court and the Commission on Human Rights of the witness protection programme on the writ of amparo adopted in 2007, the application of the Anti-Torture Act No. 9745 and of Act No. 9851 on crimes against international humanitarian law, genocide and other crimes against humanity (see 392nd Report, October 2020, Case No. 2528, paragraph 138). ***The Committee requests the Government to provide information on any progress made on the above matters.***

*Application of the Convention in practice.* The Committee welcomes the statistics provided by the Government on the number of workers' organizations and the number of workers covered in both the private and public sectors, as well as the introduction of a prohibition to contract or subcontract when undertaken to circumvent the workers' right to security of tenure, self-organization, collective bargaining and peaceful concerted activities (Executive Order No. 51, series of 2018).

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

## Saint Lucia

### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1980)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it will proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and to join organizations.* For several years, noting that the "protective services" – which include the fire services and prison officers – were excluded from the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999, the Committee had requested the Government to take the necessary measures to ensure the right to organize to fire service personnel and prison staff. The Committee notes that section 325 of the Labour Act 2006 also excludes "protective services" (which according to section 2 of the Act include the fire service and the correctional services) from the scope of application of the provisions which are dealing with the right to organize in the new legislation. ***Noting that the Government indicates in its report that the issue of the right to organize fire service personnel and prison staff would be raised with the Minister of Labour, and recalling previous indications that the workers of these services benefit in practice from this right, the Committee once again requests the Government to indicate the manner in which service personnel and prison staff are assured the organizational rights provided in the Convention.***

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

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

### Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1980)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has

not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Articles 1, 2, 4 and 6 of the Convention.* For several years, noting that the "protective services" – which include the fire services and correctional officers – were excluded from the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999, the Committee had requested the Government to take the necessary measures in order to grant fire service personnel and correctional staff the rights and guarantees provided for in the Convention. The Committee notes that the Labour Act 2006, which entered into force on 1 August 2012, repeals the Registration, Status and Recognition of Trade Unions and Employers' Organizations Act, 1999. It further notes that section 355 of the Labour Act 2006 also excludes "protective services" (which according to section 2 of the Act include the fire service and the correctional services) from the scope of application of the provisions which are dealing with the right to bargain collectively in the new legislation. ***Noting that the Government indicates in its report that fire service personnel and prison staff benefit in practice from the right to collective bargaining, and that the issue would be raised with the Minister of Labour, the Committee once again requests the Government to take the necessary measures to expressly grant in the legislation the right to collective bargaining to fire service personnel and correctional staff.***

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

## Sao Tome and Principe

### Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1992)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Adequate protection against anti-union discrimination and interference.* The Committee recalls that for a number of years it has been requesting the Government to take the necessary measures for the adoption of appropriate legislation which imposes sufficiently effective and dissuasive sanction against acts of anti-union discrimination and acts of interference against trade union organizations, in accordance with the provisions of the Convention. ***Noting with regret that the Government limits itself to mention that, in practice, other laws are resorted to in order to compensate the mentioned legislative lacuna, the Committee requests once again the Government to take the necessary measure so as to ensure that the legislation contains specific and effective provisions concerning anti-union discrimination and interference. The Committee asks the Government to provide information on any developments in this regard.***

*Article 4. Promotion of collective bargaining. Absence of a legal framework for the exercise of the right to collective bargaining and absence of collective bargaining in practice.* In its previous comments, the Committee had noted that the right to collective bargaining is recognized in Act No. 5/92, but is not the subject of legal regulation, and that the adoption of a bill on the legal framework for collective bargaining has been pending for several years.

The Committee notes with ***regret*** that, in contrast with its previous reports, the Government affirms that there is no bill being elaborated in this respect. Recalling that, in its previous observation, the Committee has also expressed concern at the absence of collective agreements in the country, the Committee highlights that the absence of a legal framework can hamper the exercise of the right to collective bargaining. ***The Committee therefore requests the Government to take all the necessary measures, both in law and practice, to encourage and promote the development and utilization of collective bargaining. The Committee reminds the Government that it can avail itself of technical assistance from the Office in relation to the various matters raised and trusts that it will be able to note the progress in the near future.***

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

## Senegal

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

*Bringing the legislation into conformity with the Convention.* The Committee recalls that, for very many years, its comments have related to the need to amend several legal provisions to bring them into conformity with the Convention. While the Government has so far indicated its willingness to make these amendments, the Committee notes with ***deep regret*** that the Government's latest report contains no information on the measures taken to implement its recommendations. ***Under these conditions, the Committee finds itself obliged once again to call on the Government to take the necessary measures without further delay to bring the national law into full conformity with the Convention on all of the following points.***

*Article 2 of the Convention. Trade union rights of minors.* The Committee recalls its previous recommendations on the need to amend section 11 of the Labour Code to guarantee the right to organize of minors who have reached the statutory minimum age for admission to work (15 years of age, under section L.145 of the Labour Code), both as workers and as apprentices, without a requirement for authorization from their parents or guardians. The Committee noted previously that a Bill amending section 11 had been approved by the National Consultative Labour Council and that the aim of this

amendment was to guarantee that minors could freely join trade unions, without any restriction or prior authorization, from the age of 16 years, which is the age of completion of compulsory schooling in Senegal. ***The Committee urges the Government to report on any progress achieved with regard to the modification of section 11 of the Labour Code to enable minors to freely join trade unions, once they have reached the minimum age for access to employment, as provided for in the Labour Code.***

*Articles 2, 5 and 6. Right of workers to establish organizations of their own choosing without previous authorization.* The Committee recalls its previous recommendations on the need to repeal Act No. 76-28 of 6 April 1976 and to amend section L.8 of the Labour Code in order to guarantee workers and their organizations the right to establish organizations of their own choosing without previous authorization. The Committee noted with regret that the Government's previous report confined itself to recalling that the procedure in question comprised only simple administrative formalities. ***The Committee urges the Government to take without delay measures to repeal the legislative provisions that restrict the freedom of workers to establish organizations of their own choosing, particularly the provisions concerning the morality and aptitude of trade union leaders or those which grant de facto to the authorities the discretionary power of previous authorization, which is contrary to the Convention.***

*Article 3. Right of trade union organizations to exercise their activities in full freedom and to formulate their programmes. Requisitioning in the event of a strike.* The Committee recalls that its comments concerned the need to adopt the Decree implementing section L.276 of the Labour Code, establishing the list of jobs where the requisitioning of workers in the event of a strike is authorized only to ensure the operation of essential services in the strict sense of the term. On this point, the Committee recalls that the Government referred previously to Decree No. 72-17 of 11 January 1972, which establishes the list of posts, jobs and functions the occupant of which may be requisitioned, without taking into account the comments made by the Committee in 2006, namely that the Decree in question provides for the requisitioning of workers in the event of a strike for many posts, jobs or functions to which the definition of the term "essential services" does not apply in its strict sense (essential services are those the interruption of which would endanger the lives, safety or health of the whole or part of the population). ***The Committee urges the Government to take the necessary measures to ensure that the implementing Decree of section L.276 of the Labour Code authorizes the requisitioning of workers only to ensure the operation of essential services in the strict sense of the term.***

*Occupation of workplaces in the event of a strike*. The Committee recalls its previous recommendations on the need for a provision stipulating that the restrictions set forth in section L.276 of the Labour Code concerning the occupation of workplaces or their immediate surroundings shall apply only when strikes cease to be peaceful or when respect for the freedom to work of non-strikers and the right of the management to enter the premises of the enterprise are hindered. ***The Committee urges the Government to take the necessary measures to limit the restrictions provided for in section L.276 of the Labour Code to the instances mentioned above.***

*Article 4. Dissolution by administrative authority.* The Committee recalls that its comments concerned the need to adopt legislative or regulatory provisions that expressly provide that the dissolution of seditious associations, as envisaged by Act No. 65-40 of 22 May 1965 on associations, may in no event be applied to occupational organizations. The Government indicated in its report of 2015 that the legislation was being brought into conformity in this regard. In its report of 2018, the Government merely indicated that administrative dissolution is not feasible under Senegalese law. ***The Committee urges the Government to take the necessary measures to amend the legislation such that the dissolution of seditious organizations, provided for by Act No. 65-40 of 22 May 1965 on associations, may in no event be applied to professional organizations.***

*Trade union rights of customs workers.* In its previous comments, the Committee noted the recommendations of the Committee on Freedom of Association with respect to a case concerning the trade union rights of customs officials (see 384th Report, March 2018, Case No. 3209) inviting the Government to amend section 8 of Act No. 69-64 of 30 October 1969 (the Customs Staff Regulations Act) in order to remove the prohibition against the exercise by customs workers of their trade union rights. ***In the absence of information in this regard, the Committee once again requests the Government to indicate the measures taken or envisaged to amend section 8 of Act No. 69-64 (the Customs Staff Regulations Act) in order to remove any obstacles to the exercise of trade union rights.***

The Committee reminds the Government of the availability of ILO technical assistance with regard to the various legislative matters raised.

## Somalia

### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2014)

The Committee takes note of the Government's first report on the application of the Convention. It notes with ***interest*** the Government's indication that a draft Labour Code (the content of which is examined in the direct request accompanying this observation), was developed in collaboration with the ILO to revise the 1972 Labour Code, and that all tripartite partners were involved in the process. It further notes that this draft Labour Code and a draft Civil Service Law are currently pending approval by the Parliament. ***The Committee requests the Government to inform on the adoption process of the draft Labour Code and the draft Civil Service Law and to transmit copies of the laws once adopted.***

The Committee also notes the observations of the Federation of Somali Trade Unions (FESTU), received on 1 October 2020, alleging violations of the right to organize, including the right to strike, at an airport management company, as well as pressures and threats by the police against trade union officials. ***The Committee requests the Government to provide its comments in this respect.***

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

## Sri Lanka

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year (see *Article 4* below), as well as on the basis of the information at its disposal in 2019.

The Committee notes the Government's reply to the 2018 observations of the International Trade Union Confederation (ITUC) and the Free Trade Zones and General Services Employees Union (FTZ and GSEU) which referred to allegations of anti-union dismissals in export processing zones (EPZs) as well as the refusal to recognize the right of unions to bargain collectively in the EPZs. The Committee notes that the Government indicates that labour inspectors have the right to enter workplaces in EPZs at any time and without prior notice and that the Labour Offices have not received any complaints in this regard.

The Committee also notes the observations of the ITUC received on 1 September 2019 alleging anti-union dismissals in a company and denouncing that anti-union discrimination and union-busting remain a major problem in the country. ***The Committee requests the Government to send its reply thereon.***

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Effective and expeditious procedures.* For many years, the Committee has referred to the fact that, in practice, only the Department of Labour can bring cases concerning anti-union discrimination before the Magistrate's Court and that there are no mandatory time limits for bringing cases before the Court. Recalling the importance of efficient and rapid proceedings to redress anti-union discrimination acts, the Committee had urged the Government to take the necessary measures to ensure that workers who are victims of anti-union discrimination can lodge a complaint before the judicial courts. The Committee had also expressed the hope that the Industrial Disputes Act be amended to grant trade unions the right to bring anti-union discrimination cases directly before the courts. In this respect, the Committee notes that the Government indicates once again that the possibility for workers and for trade unions to lodge complaints with the judicial courts has been discussed for years at the National Labour Advisory Council (NLAC) but that no consensus has been reached on this matter. The Government expresses the view that, as an impartial institution, the Department of Labour is in a better position than the victims are to carry out investigations and collect evidence in relation to anti-union discrimination complaints. The Government reports that, by the end of 2018, 311 cases of anti-union discrimination were pending and eight had concluded. ***Recalling that anti-union discrimination is one of the most serious violations of freedom of association, and observing that, according to the ITUC, anti-union discrimination and union-busting remain a major problem in the country, the Committee once again: (i) urges the Government to take the necessary measures in the near future to ensure that workers who are victims of anti-union discrimination can lodge a complaint before the courts and (ii) expresses the hope that the Government will take the necessary measures to amend the Industrial Disputes Act so as to grant trade unions the right to bring anti-union discrimination cases directly before the courts. The Committee also requests the Government to continue to provide information on the number of cases of anti-union discrimination examined by the courts as well as to indicate the duration of proceedings and the sanctions or remedies imposed.***

*Article 4. Promotion of collective bargaining. Export processing zones (EPZs).* The Committee notes the information provided by the Government on measures taken to promote collective bargaining in the

EPZs and welcomes the Government's indication that in 2018 and 2019 the Department of Labour conducted 12 awareness-raising programmes in the EPZs reaching approximately 1,000 workers and covering more than 50 work places. The Committee also notes the Government's indication that the fact that only trade unions can engage in collective bargaining discourages the establishment of employee councils in the EPZ's. The Committee takes note that in its supplementary report the Government reiterates the information provided in previous years that seven collective agreements are currently in force in EPZs. The Committee notes, however, that the Government does not indicate the number of trade unions and employees' councils established in the EPZs, as requested by the Committee. ***The Committee therefore requests the Government to provide such information and to continue to inform on the number of collective agreements concluded by trade unions in the EPZs and the number of workers covered by them in comparison with the total number of workers employed in this sector. Recalling previous ITUC observations regarding the refusal to recognize the right of unions to bargain collectively in the EPZs, the Committee encourages the Government to continue to take measures to promote collective bargaining in the EPZs and requests it to provide information in that regard.***

*Representativeness requirements for collective bargaining.* In its previous comments, the Committee had requested the Government to review section 32(A)(g) of the Industrial Disputes Act, according to which no employer shall refuse to bargain with a trade union which has in its membership not less than 40 per cent of the workers on whose behalf the trade union seeks to bargain. The Committee notes that the Government reiterates that this matter was discussed within the NLAC but that both the employers and major trade unions do not agree to reduce the threshold, as it would create more divisions in the work place and dilute the trade union representation and bargaining power. The Government also reiterates that unions who do not meet the required threshold of representativity can merge and operate as one and indicates that some employers have accepted to bargain with trade unions without considering the threshold of 40 per cent. Recalling that the ITUC had previously referred to cases where companies had refused to bargain collectively with unions that did not reach the 40 per cent threshold, the Committee wishes to recall that the determination of the threshold of representativity to designate an exclusive agent for the purpose of negotiating collective agreements, which are designed to be applied to all workers in a sector or establishment, is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. The Committee considers however that, if no union in a specific negotiating unit meets the required threshold of representativity to be able to negotiate on behalf of all workers, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members. ***The Committee therefore reiterates that it expects that the NLAC and the Government will take the necessary measures to review section 32(A)(g) of the Industrial Disputes Act, in accordance with Article 4 of the Convention, in order to ensure that, if there is no union representing the required percentage to be designated as the collective bargaining agent, the existing unions are given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members. The Committee requests the Government to provide information in this respect.***

*Article 6. Right to collective bargaining for public service workers other than those engaged in the administration of the State.* The Committee had previously noted that the procedures regarding the right to collective bargaining of public sector workers did not provide for genuine collective bargaining, but rather established a consultative mechanism. In its last report, the Government had indicated that it was going to take measures with a view to addressing this issue. In that respect, the Committee notes that the Government once again indicates that: (i) the Industrial Disputes Act recognizes the right of private sector trade unions to bargain collectively with the employer or the authority concerned; (ii) in Sri Lanka, the private sector includes government corporations where a large segment of workers are engaged; and (iii) section 32(A) of the Act, which deals with unfair labour practices and collective bargaining, applies not only to trade unions in the private sector but also to trade unions in public corporations. The Government also indicates that the public sector of Sri Lanka constitutes 14 per cent of all employees and that trade unions with significant bargaining power have bargained specific allowances which have led to disproportionate disparities in the public sector with respect to net salaries. The Government expresses the view that legally allowing collective bargaining rights to the public sector employees would be unfavourable to the sustainability of the Government. In that connection, the Committee wishes to reiterate once again that there are arrangements that allow for the conciliation of the balance of public budgets and the protection of the principle of equal remuneration for work of equal value in the public sector, on the one hand, and the recognition of the right to collective bargaining, on the other. It also recalls once again that, in order to give effect to Article 6 of the Convention, a distinction should be drawn between, on the one hand, public servants engaged in the administration of the State, 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 autonomous public institutions, who should benefit from the guarantees provided for in the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 172). ***In view of the above and considering that section 49 of the Industrial Disputes Act excludes state and government employees from the Act's scope of application, the Committee reiterates***

***its previous request to the Government to take the necessary measures to guarantee the right to collective bargaining of the public sector workers covered by the Convention with respect to salaries and other conditions of employment. The Committee also reminds the Government that it may have recourse to the technical assistance of the Office.***

***[The Government is asked to reply in full to the present comments in 2021.]***

# Turkey

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019 (see sections on *Civil liberties* and *Article 2* below).The Committee notes the observations of the Confederation of Public Employees Trade Unions (KESK), received on 31 August 2020, of the International Trade Union Confederation (ITUC), received on 16 September 2020, of Education International (EI), received on 1 October 2020, and the Government's detailed replies thereon. The Committee further notes the observations of the Confederation of Public Servants Trade Unions (MEMUR-SEN), communicated with the Government's supplementary report.

The Committee had previously noted the observations of the ITUC, received on 1 September 2019 and examined by the Committee below. It had further noted the observations of the KESK and of the Turkish Confederation of Employers' Associations (TİSK) transmitted by the Government with its report and referring to the issues raised by the Committee below. The Committee further noted the observations of the International Transport Workers' Federation (ITF), received on 4 September 2019 and referring to the information submitted by the ITUC. The Committee also noted the TİSK observations received on 2 September 2019.

The Committee recalls that it had previously requested the Government to reply to the 2018 observations of the Confederation of Turkish Trade Unions (TÜRK-İŞ) alleging that workers employed temporarily via private employment agencies could not enjoy trade union rights, as well as to the allegations of pressure exercised on workers, particularly in the public sector, to join unions designated by the employer. The Committee notes the Government's indication that in a "triangular employment contract" arrangement (in which the worker is employed by a temporary employment agency and works for a different employer), workers have the right to organize in the branch of activity in which the employment agency operates. ***The Committee requests the Government to provide further information in this regard, including concrete examples as to how the rights of workers in a triangular employment contract arrangement are exercised in practice.*** With regard to the allegation of pressure exercised on workers in the public sector, the Government refers to the legislative provisions guaranteeing protection against anti-union discrimination and points out that unions and workers are entitled to administrative and judicial means to contest such actions. It refers, in particular, to the first paragraph of article 118 of the Penal Code, according to which, any person who uses force or threats with the aim of compelling a person to join a trade union or not to join, or to participate in union activities or not to participate, or to resign from a trade union office shall be punished by imprisonment for a term of six months to two years. In addition, according to the Government, in such cases, the legislation provides for compensation equivalent to at least the amount of one year's wage and, in the case of a dismissal, the possibility of reinstatement. Public sector employers have the responsibility to respect the law in discharging their duties and thus are further liable under the public law.

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussion that took place in the Conference Committee in June 2019 concerning the application of the Convention. The Committee observes that the Conference Committee noted with concern the allegations of restrictions placed on workers' organizations to form, join and function and called on the Government to: (i) take all appropriate measures to guarantee that irrespective of trade union affiliation, the right to freedom of association can be exercised in normal conditions with respect for civil liberties and in a climate free of violence, pressure and threats; (ii) ensure that normal judicial procedure and due process are guaranteed to workers' and employers' organizations and their members; (iii) review Act No. 4688, in consultation with the most representative workers' and employers' organizations, in order to allow that all workers without any distinction, including public sector workers, have freedom of association in accordance with the Convention in law and practice; (iv) revise Presidential Decree No. 5 to exclude workers' and employers' organizations from the scope; and (v) ensure that the

dissolution of trade unions follows a judicial decision and that the rights of defence in due process are fully guaranteed through an independent judiciary.

*Civil liberties*. The Committee recalls that for a number of years it has been commenting upon the situation of civil liberties in Turkey. Noting the Government's indication that domestic administrative or judicial remedies were available against all acts of the administration, the Committee had requested the Government to indicate whether such remedial channels had been invoked by those affected and with what results. The Committee had also requested the Government to provide information on the measures taken to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention.

The Committee recalls that in its previous comment it noted the Government's reiteration that Turkey is a democratic country, upholding the rule of law and that no trade union had ever been closed or their officials suspended or dismissed on grounds of their legitimate activities. The Government indicated that: (i) with the enactment of the Act on Trade Unions and Collective Labour Agreement (Act No. 6356) and substantial amendments to Act No. 4688 on public employees unions in 2013, the rate of unionization has steadily increased, reaching 22 per cent in public and private sectors combined (66.79 per cent public sector; 13.76 per cent private sector). Currently, there are four trade union confederations in the private sector and ten confederations of public servants trade unions. Like all democratic countries, Turkey has a regulatory framework for organizing meetings and demonstrations. When trade union members transgress the law, destroy public and private property and seek to impose their own rules during the meetings and demonstrations, the security forces are obliged to intervene to preserve public order and safety. The Government indicates that marches and demonstrations can be organized with a prior notification, as illustrated by the May Day celebrations, held by all trade unions and confederations in a peaceful manner. The Government further reiterates that fundamental rights and freedoms are protected under the national Constitution. Apart from the right to seek judicial review against acts of the administration, every person may apply to the Constitutional Court against public authorities for violation of constitutional rights and freedoms. The Government further points out that the allegations mostly concern the period during the state of emergency between July 2016 and July 2018 in the aftermath of a coup attempt and that the problems occurred when the requirements of the state of emergency were ignored and disrespected persistently by some trade unions and their members. Although civil servants do not have the right to strike, strike actions were called for by some public servants' trade unions and their members; and open air meetings and demonstrations were conducted in violation of the provisions of the Act on Meetings and Demonstrations No. 2911. Consequently, the disciplinary procedures may have been applied for civil servants involved in politics.

Regarding the alleged excessive use of force by the security forces, the Government points out that it has taken all the necessary measures to prevent the occurrence of such incidences. It explains that these incidences largely occurred for two reasons: (i) infiltration of illegal terrorist organizations into the marches and demonstrations organized by trade unions; and (ii) the insistence of some trade unions to organize such meetings in areas not allocated for such purposes. The Government informs that the security forces intervened in 2 per cent of cases out of 40,016 actions and activities in 2016; in 0.8 per cent of cases out of 38,976 activities in 2017; and in 0.7 per cent of cases out of 36,925 activities in 2018. According to the supplementary information provided by the Government, the rate of interference by the security forces decreased from 0.8 per cent in 2017 to 0.7 per cent in 2019. The Government further indicates that in 2019, 51,525 demonstrations or activities were conducted involving 32,166,244 people, representing, compared to 2018, an increase of 3.6 per cent in the number of events and an increase by 11.07 per cent in terms of participants. The Government indicated in its 2019 report that the police intervention occurs only in cases of violence and attacks against the security forces and citizens and when the life of citizens is affected unbearably.

The Committee recalls that in its 2019 report, the Government indicated that a Judicial Reform Strategy was launched on 30 May 2019 by the President of the Republic. The main aims of this reform include strengthening of the rule of law, effective protection and promotion of rights and freedoms, strengthening the independence of the judiciary and improving impartiality, increasing the transparency of the system, simplifying judicial processes, facilitating access to justice, strengthening the right of defence and efficiently protecting the right to trial in a reasonable time. The Government indicated that a clear and measurable Action Plan would also be prepared and the Ministry of Justice would issue annual monitoring reports.

While taking note of the above, the Committee noted with ***concern*** the observations of the ITUC alleging that since the attempted coup and the severe restrictions on civil liberties imposed by the Government, workers' freedoms and rights have been further restricted (the ITUC denounces, in particular, police crackdowns on protests and the systematic dismissal of workers attempting to organize). The Committee further noted with ***concern*** the allegation of the murder of a president of the rubber and chemical workers' union Lastik-İş on 13 November 2018 and the sentencing, on 2 November 2018, of 26 trade union members to a suspended five-month imprisonment for "disobeying the law on meetings and

demonstrations" after taking part in a protest in March 2016 demanding the recognition of the right to organize at a private company (the ITUC alleged that the protest was violently dispersed by police). The Committee also noted with ***concern*** the ITUC allegations of criminal prosecution of the following trade union leaders for their legitimate trade union activities: (i) the General Secretary of the teacher's union Eğitim Sen was arrested in May 2019 for attending a press meeting and was thus not allowed to attend the ILO Conference; (ii) Kenan Ozturk, the President of the transport workers' union TÜMTIS, and four other union officials were arrested under Act No. 2911 for visiting, in 2017, the unfairly dismissed workers of a cargo company in the Province of Gaziantep and holding a press conference; while they await criminal trial, another TÜMTIS leader, Nurettin Kilicdogan is still in prison; (iii) Arzu Çerkezoğlu, the President of the Confederation of Progressive Trade Unions of Turkey (DISK) is facing criminal trial for speaking at the public panel organized by Turkey's opposition party in June 2016; and (iv) in May 2019, the prosecution began proceedings against Tarim Orman-is, the President of the Civil Servants Union of Agriculture, Forestry, Husbandry and Environment for criticising the Government after he publicly defended workers' right to benefit from the public facilities.

The Committee noted that the ITUC expressed its concern at the seriousness and persistence of violations of freedom of association and the Government's authoritarian measures to interfere in trade union affairs and impose heavy restrictions on the right to organize. The ITUC alleged that it has become almost impossible for trade unions in Turkey to operate. It stated, in this respect that from 2016, the Government has justified continued violations of civil liberties under the guise of the state of emergency through associated decrees. As a result, about 110,000 public servants and 5,600 academics had been dismissed; about 22,500 workers in private education institutions had had their work permits cancelled; 19 trade unions had been dissolved and about 24,000 workers were undergoing various forms of disciplinary action associated with workers' protests. More than 11,000 KESK representatives and members were suspended from their jobs or dismissed because of their trade union activities, under the pretext of national security and emergency powers. Furthermore, the ITUC stated that the Government continued to uphold emergency state laws that allow for arbitrary dissolution of trade union organizations. Decree No. 667 adopted in 2016 provides that "trade unions, federations and confederations … found to be in connection, communication or adherence to formations threatening national security or to terrorist organizations are banned upon the suggestion of the commission and approval of the minister concerned". The ITUC further alleged that the law makes no distinction between a trade union as an organization with an objective public purpose and individual actors and holds all trade union members guilty by association with a closing down of the union. Although the Government had set up an Inquiry Commission to review its actions, including cases of trade union dissolution, the process did not enjoy the trust of victims and trade unions due to the manner in which it was constituted and the results of the processes so far (the ITUC alleged that it is marred by a lack of institutional independence, long waiting periods, an absence of safeguards allowing individuals to rebut allegations and weak evidence cited in decisions to uphold dismissals).

The Committee notes that in its supplementary report, the Government indicates that Mr Kenan Ozturk, the President of the transport workers' union TÜMTIS, and four other union members arrested in 2017 were acquitted in May 2018 and that another TÜMTIS leader, Mr Nurettin Kilicdogan, was released in February 2020. Regarding the ITUC allegation on the work of the Inquiry Commission, the Government indicates that the Commission began its work on 22 December 2017 and as of 2 October 2020 it has delivered 110,250 decisions (12,680 accepted and 97,570 rejected). According to the Government, 60 of the acceptance decisions are related to the opening of organizations that were shut down (associations, foundations, and television channels). The Government points out that 87 per cent of the applications have been decided within a period of 33 months. The Government further informs that currently, six Ankara Administrative Courts are competent to deal with the annulment cases brought against the decisions of the Inquiry Commission and that the "average completion time" (to finalize an application for annulment) varies, depending on the court, between 191 and 347 days.

The Committee notes with ***concern*** the most recent ITUC allegation that in 2019 and 2020, trade union leaders continued to face arrests and prosecution as the Government tried to suppress critical voices. According to the ITUC, while the courts dismissed several cases, the authorities have fallen into a pattern of systematic targeting, arrest and prosecution of trade union leaders. The ITUC refers to the pending case of Umar Karatepe, director of communication of DISK, noting that his house was raided on 5 March 2020; he was arrested and taken to the police headquarters in Istanbul; and charges against him were unspecified but reportedly related to several statements made on his account on social media.

The Committee further notes with ***concern*** the MEMUR-SEN allegation of pressure and harassment put on its members, members of Bem-Bir-Sen, its affiliate, and members of Hizmet-Is, affiliated to Hak-Is, following the local elections of 31 March 2019.

***While noting the Government's reply to some of these allegations, the Committee requests the Government to provide its detailed comments on the remaining lengthy and serious allegations of violations of civil liberties and trade union rights***. The Committee observes that the issue of dismissal of

trade unionists following dissolution of trade unions is being considered by a tripartite committee of the Committee on Freedom of Association established to examine a representation under article 24 of the ILO Constitution alleging non-observance by the Government of Turkey of Convention No. 87. The Committee will proceed with its examination of these matters once the tripartite committee finalizes its work.

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations*. In its previous comments, the Committee had noted that section 15 of Act No. 4688, as amended in 2012, excludes senior public employees, magistrates and prison guards from the right to organize. The Committee noted the Government's reiteration that the restrictions under section 15 of the Act are limited to those public services where the disruption of service cannot be compensated, such as security, justice and high level civil servants.

The Committee notes that the MEMUR-SEN points out to the need to ensure freedom of association rights for pensioners, locum workers (teachers, nurses, midwives, etc.) as well as public servants who are not on the payroll and work without a contract of employment. ***The Committee requests the Government to provide its comments thereon.***

***Recalling that all workers, without distinction whatsoever, shall have the right to establish and join trade unions of their own choosing and that the only possible exceptions from the application of the Convention in this regard pertain to the armed forces and the police, the Committee encourages the Government to take the necessary measures to review section 15 of Act No. 4688, as amended, with a view to ensuring to all public servants the right to form and join organizations of their own choosing. It requests the Government to provide information on all measures taken or envisaged in this respect.***

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes*. The Committee recalls that in its previous comments it had noted that section 63(1) of Act No. 6356 provides that a lawful strike or lockout that had been called or commenced may be suspended by the Council of Ministers for 60 days by a decree if it is prejudicial to public health or national security and that if an agreement is not reached during the suspension period, the dispute would be submitted to compulsory arbitration. For a number of years, the Committee had been requesting the Government to ensure that section 63 of Act No. 6356 was not applied in a manner so as to infringe on the right of workers' organizations to organize their activities free from government interference. While observing that in a decision dated 22 October 2014, the Constitutional Court ruled that the prohibition of strikes and lockouts in banking services and municipal transport services under section 62(1) was unconstitutional, the Committee noted that pursuant to a Decree with power of law (KHK) No. 678, the Council of Ministers can postpone strikes in local transportation companies and banking institutions for 60 days. The Committee further noted with concern that in 2017, five strikes were suspended including in the glass sector on the grounds of threat to national security, while in 2015 the Turkish Constitutional Court had found a strike suspension in the same sector unconstitutional. The Committee recalled that the right to strike may be restricted or banned only with regard to public servants exercising authority in the name of the State, in essential services in the strict sense of the term, and in situations of acute national or local crisis, for a limited period of time and to the extent necessary to meet the requirements of the situation. Recalling the Constitutional Court ruling that strike suspensions in these sectors were unconstitutional, the Committee had requested the Government to take into consideration the above principles in the application of section 63 of Act No. 6356 and KHK No. 678. It further requested the Government to provide a copy of KHK No. 678. The Committee notes a copy of the Decree and will examine it once the translation thereof is available. The Committee further notes the Government's indication that the power to suspend a strike for 60 days rests with the President when a strike action is harmful to the general health and national security or to urban public transportation of metropolitan municipalities or to economic and financial stability in banking services. The Government indicates that where the strike has been suspended, the High Board of Arbitration makes maximum effort to bring the parties to an agreement. Judicial procedure is open for the stay of execution against the decision of the Board. The Government points out that pursuant to article 138 of the Constitution on "Independence of Courts," no organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of their judicial power, send them circulars, or make recommendations or suggestions. The Committee notes that, according to the ITUC, while the legislation indicates that the measure of suspension should be limited to strikes that may be prejudicial to public health or national security, it has been interpreted in such a broad manner that strikes in non-essential services have also been effectively prohibited. It informs in this respect that in January 2019 a strike called by the ITF-affiliated railway union in Izmir has been postponed under these laws. ***The Committee requests the Government to provide its comments thereon. Considering that strikes can be suspended only in essential services in the strict sense of the term, for public servants exercising authority in the name of the State or in an event of an acute national crisis, the Committee requests the Government to ensure that the above is taken into consideration in the application of section 63 of Act No. 6356 and KHK No. 678.***

The Committee recalls that the ITUC has previously alleged that Decree No. 5 adopted in July 2018 provided that an institution directly accountable to the Office of the President – the State Supervisory

Council (DDK) – had been vested with the authority to investigate and audit trade unions, professional associations, foundations and associations at any given time. According to the ITUC, all documents and activities of trade unions may come under investigation without a court order and the DDK has discretion to remove or change the leadership of trade unions. Recalling that any law that gives the authorities extended powers of control of internal functioning of unions beyond the obligation to submit annual financial reports would be incompatible with the Convention, the Committee had requested the Government to transmit a copy of Decree No. 5 in order to make a thorough examination of its conformity with the Convention. It had also requested the Government to provide specific information on any investigations or audits undertaken pursuant to Decree No. 5 and their results, including any dismissal or suspension of trade union leaders. The Committee notes the Government's indication that there has never been an investigation or audit of a trade union organization or suspension of a trade union official by the State Supervisory Council pursuant to Decree No. 5. The Government explains that the Council's powers to investigate with the purpose of ensuring the lawfulness, regular and efficient functioning and improvement of the administration emanates from of article 108 of the Constitution. It further indicates that the Council has no authority to dismiss trade union officials and has never interfered and has no intention to interfere with the internal functioning of the unions. The measures of dismissal can be taken only by the courts within the framework of existing legal arrangements. Furthermore, suspension is a measure applied to public officials in cases where the provision of public services so requires during an administrative investigation. When a suspension measure needs to be taken for elected officials such as trade union officials, the State Supervisory Council can only propose the application of this measure to the competent authorities which, in the case of trade unions, refers to the trade unions' own supervisory boards and the disciplinary committees. The Committee notes a copy of Decree No. 5 transmitted by the Government and will examine it once its translation is available. ***The Committee requests that the Government continue to provide information on any investigations or audits undertaken by the Council, pursuant to Decree No. 5 or article 108 of the Constitution, and their results including any sanctions assessed.***

*Article 4. Dissolution of trade unions*. The Committee recalls that after the attempted coup of 15 July 2016, Turkey was in a state of acute national crisis, and that an Inquiry Commission was established to examine applications against the dissolution of trade unions by a decree during the state of emergency. The Committee firmly hoped that the Inquiry Commission would be accessible to all the organizations that desired its review and that the Commission, and the administrative courts that reviewed its decisions on appeal, would carefully examine the grounds for the dissolution of trade unions paying due consideration to the principles of freedom of association. It requested the Government to provide information on the number of applications submitted by the dissolved organizations and the outcome of their examination in the Commission. The Committee had further requested the Government to provide information on the number and outcome of appeals against the negative decisions of the Commission concerning dissolved trade unions. The Committee observes that the Government refers only to cases of Cihan-Sen and Aksiyon-İş Confederations. According to the Government, these organizations, together with their affiliated trade unions, were dissolved on the basis of their connection to the FETO terrorist organization that perpetrated the coup attempt to overthrow the democratically elected government. The Government indicates that the cases of the above-mentioned organizations are still pending before the Inquiry Commission. Recalling that the dissolution and suspension of trade unions constitute extreme forms of interference by the authorities in the activities of organizations, the Committee observes, as noted above, that the issue of dissolution of trade unions is being considered by a tripartite committee of the Committee on Freedom of Association established to examine a representation under article 24 of the ILO Constitution alleging non-observance by the Government of Turkey of Convention No. 87. The Committee will proceed with its examination of this issue once the tripartite committee finalizes its work.

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

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

The Committee notes the observations of the Confederation of Public Employees Trade Unions (KESK), received on 31 August 2020, of the International Trade Union Confederation (ITUC), received on 16 September 2020, Education International (EI), received on 1 October 2020, and the Government's detailed replies thereon. The Committee further notes the observations of the Confederation of Public Servants Trade Unions (MEMUR-SEN) and of the Confederation of Turkish Trade Unions (TÜRK-IS), communicated with the Government's report. The Committee notes the Government's reply to the observations submitted by the TÜRK-IS. The Committee finally notes the observations of the Turkish Confederation of Employer Associations (TİSK), received on 29 September 2020.

*Scope of the Convention*. In its previous comments, the Committee had noted that while the prison staff, like all other public servants were covered by the collective agreements concluded in the public service, this category of workers did not enjoy the right to organize (section 15 of the Act on Public

Servants' Trade Unions and Collective Agreement (Act No. 4688)). The Committee had requested the Government to take the necessary measures, including legislative review, with a view to guaranteeing that the prison staff can be effectively represented by the organizations of their own choosing in negotiations which affect them. The Committee notes that the Government reiterates that it is forbidden to this category of public servants to establish and join trade unions due to the nature of their work and considerations of public order and safety, discipline and hierarchy, which are overarching principles in the public service administration. ***Recalling that all public servants not engaged in the administration of the State or those who are members of the armed forces or the police, defined in a restrictive manner, must enjoy the rights afforded by the Convention, the Committee once again requests the Government to take the necessary measures, including legislative review of section 15 of Act No. 4688, with a view to guaranteeing that the prison staff can be effectively represented by the organizations of their own choosing in negotiations which affect them. The Committee requests the Government to provide information on all measures taken in this respect.***

***Further noting that the MEMUR-SEN points out to the need to ensure freedom of association and collective bargaining rights to locum workers (teaches, nurses, midwives, etc.) as well as public servants who work without a written contract of employment, the Committee requests the Government to provide its comments thereon.***

*Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination.* Following up on the recommendations of the June 2013 Committee on the Application of Standards of the International Labour Conference (hereafter, the Conference Committee), the Committee has been requesting the Government to establish a system for collecting data on anti-union discrimination in both private and public sectors. The Committee notes the Government's indication that it is currently not possible to obtain reliable data on the cases of trade union discrimination. In this respect, the Government points out the difficulties with carrying out data collection, which include the length of judicial processes and the need to make considerable arrangements in the records and databases of various institutions. The Government indicates that it is necessary to carry out work with all relevant institutions and organizations on the issue of discrimination and that these institutions have to develop their own database infrastructure and recording systems to detect trade union discrimination. The Committee notes this information and underlines the importance of statistical information for the Government to fulfil its obligation to prevent, monitor and sanction acts of anti- union discrimination. ***The Committee reiterates the June 2013 request of the Conference Committee and expects that the necessary work will be conducted within each relevant institution to that end. The Committee requests the Government to provide in its next report information on the measures taken in this respect.*** The Committee notes the TISK indication that the social partners are committed to work together in this respect. ***The Committee recalls that the Government can avail itself of the technical assistance of the ILO in this regard.***

*Articles 1, 2 and 3. Massive dismissals in the public sector under the state of emergency decrees*. In its previous comments, the Committee had noted the information on the high number of suspensions and dismissals of trade union members and officials under the state of emergency. It had noted in this respect the allegation that the state of emergency was used by the political power to target and punish certain trade unions and to exert pressure on oppositional trade unions through dismissals of their members. Firmly hoping that the Inquiry Commission (established to review such dismissals) has the necessary means to examine the relevant facts, the Committee had requested the Government to provide information on the functioning of the Commission and to indicate the number of applications received from trade union members and officials, and the outcome of their examination. The Committee had also requested the Government to provide information on the number and outcome of appeals against the negative decisions of the Commission concerning trade union members and officials. The Committee notes the Government's indication that as of 2 October 2020, there were 126,300 applications submitted to the Inquiry Commission. Since 22 December 2017, the Commission delivered its decisions in respect of 110,250 applications, out of which, 12,680 were accepted (for reinstatement) and 97,570 were rejected while 16,050 applications are still pending. The Government explains that the decision of the Commission are circulated to the institutions where the persons lastly took office, which then carry out the appointments together with the Council of Higher Education, where relevant. The Government further indicates that an annulment action against the decision of the Commission and the institution or organization where the relevant person lastly tool office may be brought before any of the six Ankara Administrative Courts within a period of sixty days as from the date of notification of the decision. The Government points out that there is no statistical information available on the number of trade union members or officials who have applied to either the Inquiry Commission or Ankara Administrative Courts.

The Committee recalls that it had previously noted that according to the ITUC 2019 observations, more than 11,000 KESK representatives and members were suspended from their jobs or dismissed because of their trade union activities and requested the Government to provide its comments thereon. The Committee notes that in its most recent observations, KESK points out that close to 89 per cent of all applications are rejected by the Commission and alleges that the examination of cases involving its

members is postponed. The Committee further notes that the Government reiterates that given the higher rate of positive decisions in relation to KESK members (one in three, which is above the average rate), KESK allegations are unfounded. The Government further denies that measures imposed on KESK members were based on anti-union grounds and refers to the legislative provisions providing protection against acts of anti-union discrimination.

Further in this respect, the Committee notes the EI allegations that: during the state of emergency period, 1628 members of the Education and Science Workers Union of Turkey (EĞİTİM SEN) were dismissed from the public service by virtue of Decrees with the force of law; only 12.7 per cent of files pertaining to this union members have been examined, among which 126 applications were rejected and only 79 accepted; and as of May 2020, 1178 EĞİTİM SEN members were still without employment. While noting the Government's reply that the acceptance rate for reinstatement of EĞİTİM SEN (38,5 per cent) is much higher than the average rate (11,5 per cent), the Committee expresses its ***concern*** at the allegation that close to 75 per cent of the dismissed EĞİTİM SEN members are still without employment. ***The Committee requests the Government to provide its comments thereon.***

While taking note of the general statistics provided by the Government, as well as the detailed information in which it recalls the reasons for the state of emergency, the Committee ***regrets*** once again the absence of specific information on the number of trade union members and officials involved. The Committee notes with ***concern*** the high number of rejection cases (currently 88.5 per cent) and further ***regrets*** the absence of information regarding the number and outcome of appeals against the negative decisions of the Inquiry Commission concerning trade union members and officials. ***The Committee reiterates its firm hope that the Inquiry Commission and the administrative courts that review its decisions carefully examine the grounds for the dismissal of trade union members and officials in the public sector and order reinstatement of the trade unionists dismissed for anti-union grounds. The Committee once again requests the Government to provide specific information on the number of applications received from trade union members and officials, the outcome of their examination by the Inquiry Commission and on the number and outcome of appeals against the negative decisions of the Commission concerning trade union members and officials.***

*Article 1. Anti-union discrimination in the course of employment*. The Committee recalls the observations of KESK and the EĞİTİM SEN, alleging that hundreds of their members, mostly in the education sector, were transferred against their will from their workplaces in 2016 (at least 122 transfers, mainly for participation in trade union activities and events) and in 2017 (1,267 transfers, 1,190 of whom from the education sector). The Committee had requested the Government to take the necessary measures to prevent the occurrence of anti-union transfers and demotions in the future, and to ensure that if any anti-union discriminatory measures remained in force, they were revoked immediately. The Committee notes the most recent KESK allegations concerning relocation of its members, termination of their contracts and suspensions for having exercised their trade union rights, as well as administrative investigations launched by employers. It further notes the ITUC allegations of trade union busting at various enterprises and the Government's detailed reply thereon. The Committee notes that the Government denies any discrimination against legitimate trade union activities of any trade union organization and emphasizes that under the national legislation, no dismissal or suspension can take place because of a legitimate trade union activity or trade union affiliation. The Government points out that the protection of the legislation against anti-union discrimination in both public and private sectors are further strengthened and adjudicated through the judicial system that includes individual application to the Constitutional Court and the European Court of Human Rights against violation of fundamental rights and freedoms by public authorities. Referring to the KESK allegation of relocation, the Government points to the legislation applicable to public service, which allows for relocation if the needs of the service require. The Committee takes note of the observations submitted by workers organizations and the detailed information provided by the Government. ***The Committee requests the Government to continue engaging with the social partners regarding complaints of anti-union discrimination practices in both the private and public sectors.***

*Article 4. Promotion of collective bargaining. Cross-sector bargaining*. In its previous comments, the Committee had noted that while cross-sector bargaining resulting in "public collective labour agreement framework protocols" was possible in the public sector, this was not the case in the private sector. It noted in this respect that pursuant to section 34 of Act No. 6356, collective work agreement may cover one or more than one workplace in the same branch of activity, thereby making cross-sector bargaining in the private sector impossible. The Committee had requested the Government to consider, in consultation with the social partners, the amendment of section 34 of Act No. 6356 in a manner so as to ensure that it does not restrict the possibility of the parties in the private sector to engage in cross-sector regional or national agreements should they so desire. The Committee notes the Government's indication that section 34 of the Act was drafted taking into account the views of the social partners. The Government indicates that this provision regulates the scope and level of collective bargaining with a view to protect and strengthen workplace peace and that the legislation in question does not restrict collective bargaining to the level of

workplace but allows also the enterprise and group level bargaining as well as framework agreements. The Committee notes the TISK indication that because of the sectoral characteristics and the difficulties to compile all of them in a single agreement, inter-sectoral or national agreements are not favoured by the social partners. While taking note of these explanations, the Committee recalls that in accordance with *Article 4* of the Convention, collective bargaining should remain possible at all levels and that the legislation should not impose restrictions in this regard. ***The Committee therefore once again requests the Government to consider, in consultation with the social partners, the amendment of section 34 of Act No. 6356 so as to ensure that the parties in the private sector wishing to engage in cross sector regional or national agreements can do so without impairment. It requests the Government to provide information on the steps taken in this regard.***

*Requirements for becoming a bargaining agent*. The Committee recalls that in its previous comments, it had noted that section 41(1) of Act No. 6356 initially set out the following requirement for becoming a collective bargaining agent: the union should represent at least 1 per cent (progressively, 3 per cent) of the workers engaged in a given branch of activities and more than 50 per cent of workers employed in the workplace and 40 per cent of workers of the enterprise to be covered by the collective agreement. It further recalls that the 3 per cent threshold was decreased to 1 per cent by Act No. 6552 of 10 September 2014 and that additionally, section 1 of Act No. 6356 stipulating that the 1 per cent membership threshold should be applied as 3 per cent with regard to trade unions that are not members of confederations participating in the Economic and Social Council was repealed by the Constitutional Court. Therefore, the 3 per cent branch threshold was reduced to 1 per cent with regard to all trade unions. Furthermore, the Committee recalls that until 6 September 2018, legal exemptions from the branch threshold requirement were granted to three categories of previously authorized trade unions, so as to prevent the loss of their authorization for collective bargaining purposes. Recalling the concerns that had been expressed by several workers' organizations in relation to the perpetuation of the double threshold and noting that the exemption granted to the previously authorized unions was provisional, the Committee had requested the Government to indicate whether the exemption had been extended beyond 6 September 2018, and the impact of the decision made in this regard on the capacity of previously authorized organizations to bargain collectively. It had further requested the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective bargaining machinery as a whole in full consultation with the social partners, and should it be confirmed that the perpetuation of the 1 per cent threshold had a negative impact on the coverage of the national collective bargaining machinery, revise the law with a view to its removal.

The Committee recalls that the Government had previously pointed out that Act No. 6356 was drafted in consultation with the social partners and taking into consideration the universal principles regarding trade union rights and freedoms. Following the entry into force of the arrangements outlined in the Act, the Government proceeded to obtain the views and evaluations of the social partners. While some of the social partners asked for the continuation of the branch level threshold, others were of the view that it needs to be reduced or abolished; there was no agreement on this issue. The Government had indicated, however, that should a consensus be achieved on this matter, steps would be taken to make the necessary arrangements.

The Committee notes the Government's indication that the provisional exemption of the branch of activity threshold requirement was extended until 12 June 2020 by Act No. 30799, published on 12 June 2019. The Government indicates that following publication of the Act, the exempted trade unions concluded collective agreements. The Committee notes the TISK indication that the exempted trade unions have been given a significant opportunity to increase their membership. However, following three consecutive extensions, most of the unions in question have not reached the branch level threshold. The TISK indicates that there was a consensus among the social partners for the discontinuation of the exemption. ***Noting that the provisional exemption has expired on 12 June 2020, the Committee requests the Government to indicate if further extension has been decided and if not, to provide information on the impact of the non-extension on the capacity of previously authorized organizations to bargain collectively and to indicate the status of the collective agreements concluded by them. It also requests the Government to continue monitoring the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective bargaining machinery as a whole in full consultation with the social partners and to provide information in this regard.***

With regard to the workplace and enterprise representativeness thresholds, in its previous comments, the Committee had noted section 42(3) of Act No. 6356, which provides that if it is determined that there exists no trade union which meets the conditions for authorization to bargain collectively, such information is notified to the party which made the application for the determination of competence. It had further noted section 45(1), which stipulates that an agreement concluded without an authorization document is null and void. While noting the "one agreement for one workplace or business" principle adopted by the Turkish legislation, the Committee had recalled that under a system of designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the

exclusive bargaining agent, all unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. The Committee highlighted that by allowing for the joint bargaining of minority unions, the law could adopt an approach more favourable to the development of collective bargaining without compromising the "one agreement for one workplace or business" principle. The Committee had requested the Government to take the necessary measures to amend the legislation, in consultation with the social partners, and to provide information in this respect. The Committee notes that the Government refers to its previous indication that: (1) the issue of the amendment of the collective bargaining system was discussed with the social partners but no model could be agreed upon by everyone; and that (2) it would consider the proposal for the amendment to the legislation if put forward by the social partners and if such a proposal represented a consensus. The Committee recognizes that while the search for a consensus with regard to collective bargaining is important, it cannot constitute an obstacle to the Government's obligation to bring the law and practice into conformity with the Convention. ***The Committee therefore once again requests the Government to amend the legislation so as to ensure that if no union represents the required percentage of workers to be declared the exclusive bargaining agent, all unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. It requests the Government to provide information on all measures taken or envisaged in this regard.***

*Articles 4 and 6. Collective bargaining rights of public servants not engaged in the administration of the State. Material scope of collective bargaining*. The Committee had previously noted that section 28 of Act No. 4688, as amended in 2012, restricts the scope of collective agreements to "social and financial rights" only, thereby excluding issues such as working time, promotion and career as well as disciplinary sanctions. The Committee notes that the Government reiterates its previous indication that the demands of the unions and their confederations that do not fall within the category of financial and social rights are received and considered at the other, more appropriate platforms established beside collective bargaining. The Committee is therefore bound to once again recall that public servants who are not engaged in the administration of the State should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment and that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention. The Committee wishes to further recall however, that the Convention is compatible with systems requiring competent authorities' approval of certain labour conditions or financial clauses of collective agreements concerning the public sector, as long as the authorities respect the agreement adopted. ***Bearing in mind the compatibility with the Convention of the special bargaining modalities in the public sector as mentioned above, the Committee again requests the Government to take the necessary measures to ensure the removal of restrictions on matters subject to collective bargaining so that the material scope of collective bargaining rights of public servants not engaged in the administration of the State is in full conformity with the Convention.***

*Collective bargaining in the public sector. Participation of most representative branch unions.* In its previous comment, the Committee had noted that pursuant to section 29 of Act No. 4688, the Public Employers' Delegation (PED) and Public Servants' Unions Delegation (PSUD) are parties to the collective agreements concluded in the public service. In this respect, the proposals for the general section of the collective agreement were prepared by the confederation members of PSUD and the proposals for collective agreements in each service branch were made by the relevant branch trade union representative member of PSUD. The Committee had also noted the observation of the Turkish Confederation of Public Workers Associations (Türkiye KAMU-SEN), indicating that many of the proposals of authorized unions in the branch were accepted as proposals relating to the general section of the agreement meaning that they should be presented by a confederation pursuant to the provisions of section 29 and that this mechanism deprived the branch unions from the capacity to directly exercise their right to make proposals. Noting that although the most representative unions in the branch were represented in PSUD and took part in bargaining within branch-specific technical committees, their role within PSUD was restricted in that they were not entitled to make proposals for collective agreements, in particular where their demands were qualified as general or related to more than one service branch, the Committee had requested the Government to ensure that these unions can make general proposals. The Committee notes that the Government refers to its previous indication that collective bargaining is held every two years in order to discuss the issues that concern service branches and general issues together. On that occasion, collective bargaining offers for all service branches are determined separately by the authorized trade unions having the highest number of members in that service branch. Naturally, the proposals of the trade unions are determined exclusively for the service branches due to the differences in the service branches and the public servants within the scope of those branches and discussed in the special committees established separately for the service branches by the Heads of PED and PSUD. ***Considering that where joint bodies within which collective agreements must be concluded are set up, and the conditions imposed by law for participation in these bodies are such as to prevent a trade union which would be the most representative of its branch of activity from being associated in the work of the said bodies, the principles of the Convention are impaired, the Committee again requests the***

***Government to ensure that Act No. 4688 and its application enable the most representative unions in each branch to make proposals for collective agreements including on issues that may concern more than one service branch, as regards public servants not engaged in the administration of the State.***

*Collective bargaining in the public sector. Public Employee Arbitration Board*. In its previous comment, the Committee had noted that pursuant to sections 29, 33 and 34 of Act No. 4688, in case of failure of negotiations in the public sector, the chair of PED (the Minister of Labour) on behalf of public administration and the chair of PSUD on behalf of public employees, can apply to the Public Employees' Arbitration Board. The Board decisions were final and had the same effect and force as the collective agreement. The Committee had noted that seven of the 11 members of the Board including the chair were designated by the President of the Republic and considered that this selection process could create doubts as to the independence and impartiality of the Board. The Committee had therefore requested the Government to take the necessary measures for restructuring the membership of the Public Employee Arbitration Board or the method of appointment of its members so as to more clearly show its independence and impartiality and to win the confidence of the parties. The Committee notes that the Government refers to its 2019 report in which it confirms that in addition to the Head of the Board, its five other members with knowledge in public administration, public finances and public personnel regime, as well as one member among the academics proposed by the competent confederations, are appointed by the President. ***The Committee requests the Government to consider reviewing, in consultation with the social partners, the method of appointment of the Board members so as to more clearly show its independence and impartiality and to win the confidence of the parties.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Workers' Representatives Convention, 1971 (No. 135) (ratification: 1993)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Article 1 of the Convention. Massive dismissals of public servants*. The Committee had previously noted that following the coup attempt in July 2016, a great number of public servants, including an unknown number of trade union representatives, were dismissed on the basis of emergency decrees. In these circumstances, the Committee had requested the Government to ensure that workers' representatives were not dismissed on the basis of their status or activities as a workers' representative or of their union membership or participation in union activities, in so far as they acted in conformity with existing laws. In case of existence of grounds to believe that a workers' representative had been involved in illegal activities, the Committee had requested the Government to ensure that all guarantees of due process were fully afforded. The Committee had further requested the Government to provide statistical information on the number of union representatives affected by the dismissals and suspensions based on emergency decrees. The Committee had noted the establishment, for a two year period, of an ad hoc Inquiry Commission to review the dismissals based on the state of emergency decrees and, in this respect, noted with concern that the Commission would have to deal with a very significant caseload in a relatively short period of time. The Committee had requested the Government to ensure that the Inquiry Commission was accessible to all dismissed workers' representatives who desire its review, and that it was endowed with the adequate capacity, resources and time to conduct the review process promptly, impartially and expeditiously. The Committee had further requested the Government to ensure that the dismissed workers' representatives did not bear alone the burden of proving that the dismissals were discriminatory, by requiring the employers or the relevant authorities to prove that the decision to dismiss them was justified based on other grounds. Finally, the Committee had requested the Government to provide statistical information on the number of applications lodged and processed in the Inquiry Commission and administrative courts by affected workers' representatives and to indicate the outcome of those procedures.

The Committee noted the Government's indication in its 2019 report that the dismissal of public servants from public service, which may include some trade union representatives, by the state of emergency decrees, was based on the grounds of their membership, affiliation or connection to terrorist organizations, following the coup attempt in 2016. The Government reiterated that after the coup attempt, it issued state of emergency decrees to eliminate the influence of terrorist organizations, such as Fethullahist Terrorist Organization (FETO), Kurdistan Workers' Party (PKK) or ISIS (DAISH). According to the Government, these terrorist organizations, in particular the one that perpetrated the said coup attempt to overthrow the democratically elected legitimate government in Turkey, established themselves within the state structure of the central and local government institutions and agencies, particularly in the armed forces, police, judiciary and educational institutions. The Government further reiterated that public servants are obliged, on the one hand, to carry out their duties with loyalty to the Constitution and the existing laws, in a manner respecting the principles of neutrality and equality, while on the other, not to join or assist any movement, group, organization or association that carry out illegal activities. It pointed

out that being a public servant or a trade union member or representative or even a trade union officer does not ensure immunity from prosecution for illegal activities. The Government further explained that dismissal or suspension procedures of the public servants who were deemed to be member or affiliate of or in liaison or cohort with the terrorist organizations or the structures, entities or groups that were considered by the National Security Council as operating against the national security of the State were conducted in conformity with the provisions of the State of Emergency Act No. 2935, Civil Servants Act No. 657 and the Decrees with the force of law. The Government referred in this respect to the decision of the Constitutional Court of Turkey in a case involving the dismissal of two members of its court: "although the coup attempt was *de facto* prevented, taking measures in order to eliminate the dangers against the democratic constitutional order, fundamental rights and freedoms and national security, and to prevent future attempts is not only within the scope of the state's authority, it is also a duty and responsibility towards individuals and society that cannot be postponed [...] in some cases, it may not be possible for the state to eliminate the threats against democratic constitutional order, fundamental rights and freedoms and national security through ordinary administrative procedures. Accordingly, it may be necessary to impose extraordinary administrative procedures until these threats are eliminated".

The Government explained that the Inquiry Commission was established to ensure that those affected by the state of emergency decrees enjoyed due process of law. Public servants dismissed directly by a decree with the force of law could apply to the Commission and the applicants whose application was rejected by the Commission could bring their case to the competent administrative courts. The Government reiterated that a dismissal through a decree with the force of law was a measure applied only during the state of emergency and all of the judicial recourse avenues are open against the decisions of the Inquiry Commission through the judicial system, including the Constitutional Court of Turkey and the European Court of Human Rights. The Inquiry Commission's period of office is renewable by one year after the initial two-year period. Hence, the operation of the Commission will continue until its work has been fully carried out. All dismissed public servants, including trade union representatives, have the right to apply to the Inquiry Commission for a review of their dismissals; the only exception being the members of the judiciary whose application should be made to the judicial bodies indicated in the relevant decree and law. The Commission's activities can be followed by the public through its announcements on its web page. The Government emphasized that the Commission undertook its work with no other intention than to protect the democratic constitutional order, the rule of law and the rights of individuals and works in a transparent manner respecting the rights of individuals. According to the Government, due process of law was functioning well and every dismissed public servant had access to legal remedies.

The Government further explained that following the examination, the Commission may dismiss or accept the application. In case of acceptance of the application concerning those who were dismissed from the public service, profession or organization, the decision is notified to the public organization/institution where the applicant was last employed for his/her reinstatement within 15 days. In case of a rejection, the applicant can have recourse to the competent administrative courts. With regard to burden of proof, the Commission demands from the relevant institution to submit the documents and information showing the applicant's membership, affiliation or connection to a terrorist organization. If no such document and information is provided and no investigation or prosecution exists about the applicant, then the Commission accepts the application for reinstatement. The decisions of the Commission are transmitted to the relevant institution or organization, which then appoints the person whose reinstatement was pronounced. The Council of Judges and Prosecutors may bring an annulment action before the Ankara Administrative Court against the decision of the Commission and the relevant institution or organization within a period of 60 days as from the date of notification of the decision. The Committee notes in this respect that in its supplementary report, the Government indicates that six Ankara Administrative courts are designated to deal with annulment cases.

The Committee further notes that in its supplementary report, the Government reiterates that apart from its seven members, the Commission employs a total of 250 persons, 80 of whom are judges, experts and inspectors employed as rapporteurs. Following the establishment of a data processing infrastructure for the application process, the information on the applications received from 20 institutions and organizations has been recorded in this system. The Government further indicates that a total of 490, 000 files, including personnel files, court files and former applications, have been classified, registered and archived.

The Government informs that 131,922 measures were taken through the state of emergency decrees, including the dismissal from public service of 125,678 persons. As of 2 October 2020, the Commission pronounced itself on 110,250 applications out of 126,200 applications received; 16, 050 applications are still pending. Among these 110,250 applications for which a decision was made, 12,680 were accepted for reinstatement and 97,570 were rejected.

The Committee recalls that the Government had previously indicated that no statistical information is available on the number of trade union representatives affected and the number of applications to the courts.

The Committee recalls that *Article 1* of the Convention requires the effective protection of workers' representatives against dismissals based on their activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. The Committee further recalls that in this respect that it had requested the Government to ensure that the dismissed workers' representatives did not bear alone the burden of proving that the dismissals were discriminatory. ***While noting the updated information provided by the Government in this respect, the Committee once again requests it to provide further details on the handling of cases where workers' representatives allege before the Inquiry Commission or the administrative court that they were subject to a dismissal based on their legitimate trade union activity or affiliation.*** The Committee notes with ***regret*** that no statistical information is available on the number of trade union representatives affected and the number of applications made by them to courts and points out that this information is crucial in order to assess whether the protection of workers' representatives afforded by the Convention is effectively ensured. ***Noting the detailed and updated information provided by the Government regarding the data processing system established for the purpose of the Inquiry Commission, the Committee urges the Government to take the necessary measures in order to ensure that it allows retrieving information on the number of trade union representatives affected. The Committee once again requests the Government to provide this information and to indicate, in particular, the number of trade union representatives reinstated following the decision of the Commission and the number of appeals to the administrative courts, as well as the outcome of such appeals.***



## Uruguay

### Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1954)

The Committee notes the supplementary information provided by the Government in the light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the observations submitted by the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019. It also notes the joint observations of the National Chamber of Commerce and Services of Uruguay (CNCS), the Chamber of Industries of Uruguay (CIU) and the International Organisation of Employers (IOE), received on 1 September and 22 November 2019, and also on 30 September 2020 which, like the observations of the ITUC, concern matters addressed by the Committee in this comment. The Committee also notes the Government's replies to the observations of the employers' organizations from 2019 and 2020.

#### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussions that took place in the Committee on the Application of Standards of the Conference (hereinafter: the Conference Committee), in June 2019, on Uruguay's application of the Convention. The Committee notes that the Conference Committee urged the Government to: (i) initiate legislative measures by 1 November 2019, after full consultation with the most representative employers' and workers' organizations and taking into consideration the recommendation of the ILO supervisory bodies, in order to guarantee the full compliance of national law and practice with the Convention; and (ii) prepare, in consultation with the most representative employers' and workers' organizations, a report to be submitted to the Committee of Experts before 1 September 2019, providing detailed information on actions undertaken to make progress in the full application of the Convention in law and practice.

*Article 4 of the Convention. Promotion of free and voluntary bargaining.* For several years, the Committee, together with the Committee on Freedom of Association (Case No. 2699), has been requesting the Government to revise Act No. 18566 of 2009 (establishing the fundamental rights and principles of the collective bargaining system, hereinafter: Act No. 18566) with a view to ensuring the full compliance of the Act with the principles of collective bargaining and the Conventions ratified by Uruguay in this area. In its previous comments, the Committee noted that, in 2015, 2016 and 2017, the Government submitted to the social partners several proposals for legislative amendments, which the Government indicated had not achieved the necessary agreement between the parties.

In its last comment, the Committee noted from the Government's report that: (i) on 29 October 2019, following various tripartite meetings, the Government submitted to Parliament a bill amending some aspects of Act No. 18566 of 11 September 2009; and (ii) the bill combined the proposals the Government made from 2015 up to the present time.

The Committee noted that, in their 2019 observations, the CNCS, CIU and IOE indicated that the proposed amendments contained in the bill were insufficient and that some of them should have been drafted differently. They also indicated that in the tripartite meetings the Government indicated that it would prepare a bill, so long as consensus was reached. The Committee also noted that, according to the Government, at the tripartite meetings that took place, the Inter-Union Assembly of Workers – Workers' National Convention (PIT-CNT) indicated that while it was willing to engage in dialogue, it thought that Act No. 18566 did not warrant amendment. For its part, the ITUC indicated that more than 90 per cent of workers were protected by collective agreements and that care was required when taking measures that could destabilize this effective mechanism.

The Committee noted that the proposed amendments contained in the bill had already been submitted in the Government's previous report. While recalling that it considered that those amendments were in compliance with the requirement of *Article 4* of the Convention to promote free and voluntary collective bargaining, the Committee regretted to observe that, despite its repeated comments, the bill did not propose amendments or clarifications regarding the competence of the Wage Boards in relation to adjustments made to wages that are above the minimum for the occupational category and working conditions (section 12 of Act No. 18566). The Committee noted that the CNCS, CIU and IOE expressed concern in that regard.

The Committee took the opportunity to recall once more that although the establishment of minimum wages may be subject to decisions by tripartite bodies, *Article 4* of the Convention seeks to promote bipartite negotiation for the setting of working conditions, whereby all collective agreements establishing working conditions shall result from an agreement between employers or employers' organizations and workers' organizations. The Committee also emphasized that mechanisms can be established that would guarantee both the free and voluntary nature of collective bargaining and the effective promotion thereof, while ensuring that the country's existing collective agreements continue to offer a high level of coverage.

The Committee notes that, in their observations from 2020, after recalling their criticism of the bill, the CIU, IOE and CNCS point out that in March 2020 a new Government took office and that, having reached the close of the legislative session, the bill was shelved, thus losing its parliamentary status without any of its provisions being adopted or even addressed. The employers' organizations express concern at the Government's persistent failure to comply with the recommendations that this Committee has now been making for many years, and they highlight the need for the Government to present a new bill, which may or may not build on antecedents.

The Committee notes from the Government's supplementary report that, 13 days after it took office, a health emergency was declared due to the COVID-19 pandemic, resulting in restrictions on activities and meetings and rendering it impossible to make progress with regard to the issues raised in this comment. The Committee notes that the Government, in reply to the observations of the employers' organizations, reaffirming its commitment to respect international standards, indicates that in November 2019, it set forth the outline of a government plan in a document entitled "Commitment for the Country", in which includes it undertook to integrate the ILO's observations into collective bargaining law by amending the current regulations. The Committee also notes, according to the Government, that: (i) it intends to initiate a new phase of dialogue, without ruling out the possibility of recourse to ILO technical assistance; (ii) during this new phase of dialogue, the Government would present a new bill, taking the draft already submitted and now shelved as input, together with the comments made in its regard by the social partners; and (iii) it was in the process of drafting a bill on the legal personality of trade union organizations, which it will shortly share with the social partners, and which will cover some areas of the observations.

While duly recognizing the particular difficulties caused by the pandemic that the Government has had to confront since taking office, the Committee ***regrets*** that to date no progress has been achieved in terms of integrating its recommendations into the legislation. ***However, taking due note of the commitment made by the Government to adjust the legislation in light of the Committee's comments, the Committee strongly hopes that, after consulting the social partners, the Government will place before Parliament, as soon as possible, a bill that, conforming to the outline proposed in its latest comments, fully guarantees both the free and voluntary nature of collective bargaining and the continued effective promotion thereof, in accordance with the Convention. The Committee requests the Government to report on all progress in that regard and recalls that it can continue to count on the technical assistance of the Office. It also requests it to provide information on the bill on the legal personality of trade union organizations.***

# Bolivarian Republic of Venezuela

## Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1982)

### *Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)*

The Committee recalls that the Governing Body, at its 332nd Session (March 2018), approved the appointment of a Commission of Inquiry to examine a complaint made under article 26 of the ILO Constitution alleging non-observance by the Government of the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Committee notes that the Commission of Inquiry completed its work in September 2019 and that its report was presented to the Governing Body, which took note of it at its 337th Session (October 2019).

The Committee notes the document submitted to the Governing Body (GB.340/INS/13) with the Government's reply to the Commission of Inquiry's report, and also the discussion which took place on this matter at the 340th Session (October 2020) of the Governing Body and which will continue at its next session in March 2021. In its reply, and in its report to the Commission, the Government stated that it does not accept the recommendations of the Commission of Inquiry since compliance with them would entail the violation of the Constitution of the Republic, the separation of powers, the law, the independence, the sovereignty and the self-determination of the Bolivarian Republic of Venezuela. However, the Committee observes that the Government did not avail itself of the prerogative granted under the ILO Constitution – namely, to refer the complaint to the International Court of Justice within three months of receipt of the report. Moreover, the Committee observes that the Government expresses its readiness to improve its compliance with the Conventions ratified by the country on the basis of constructive suggestions from the ILO supervisory bodies and to receive technical assistance from the Office.

The Committee recalls that, in formulating comments on the application of the Convention by the Government of the Bolivarian Republic of Venezuela, it has been raising many of the issues examined by the Commission of Inquiry. The Committee observes that the Commission of Inquiry, after a detailed examination, confirmed a number of the concerns raised by the Committee, and also by the Committee on Freedom of Association and the Conference Committee on the Application of Standards, regarding the application of this fundamental Convention. In its report the Commission considered, in light of the gravity of the issues raised, that the situation and the progress achieved on its recommendations should be the subject of active supervision by the ILO supervisory bodies concerned. In particular, it stated that the Government must submit to the CEACR the corresponding reports on the application of the Conventions covered by the complaint for examination at its session in November–December 2020.

The Committee notes that, with regard to observance of this Convention, the Commission of Inquiry recommended that the authorities concerned take without further delay – and with implementation to be completed no later than 1 September 2020 – the necessary measures: (1) to ensure the existence of a climate free from violence, threats, persecution, stigmatization, intimidation or any other form of aggression, in which the social partners are able to exercise their legitimate activities, including participation in social dialogue with full guarantees; and (2) to ensure full respect for the independence of employers' and workers' organizations, particularly in relation to the Government and political parties; and to suppress any interference and favouritism by State authorities – also encouraging the social partners to take any measures at their disposal to preserve the independence of their organizations in defence of their members' interests.

While noting that in its report the Government emphasizes its disagreement with the conclusions and recommendations of the Commission of Inquiry, the Committee recalls that in previous occasions when following-up on recommendations of a commission of inquiry the Committee has observed that the ILO Constitution does not make the results of an inquiry subject to the consent of the State concerned. In this regard, the Committee has recalled that under article 32 of the Constitution, the only authority capable of affirming, varying or reversing the findings or recommendations of a Commission of Inquiry is the International Court of Justice, and that therefore, a government which chooses not to avail itself of the possibility of referring the matter to the International Court of Justice ought to take account of the conclusions and act upon the recommendations of the Commission of Inquiry, in light of the provisions of the ILO Constitution.

The Committee also notes the observations, regarding the follow-up to the recommendations of the Commission of Inquiry and the application of the Convention in law and in practice, sent by the following organizations: the Confederation of Workers of Venezuela (CTV), the Federation of University Teachers' Associations of Venezuela (FAPUV) and the Independent Trade Union Alliance Confederation of Workers (ASI), received on 26 May 2020; the ASI, received on 30 September 2020; the CTV, received on 30

September; FAPUV, received on 30 September; the National Federation of Administrative Professionals and Technicians of the Universities of Venezuela (FENASIPRUV), the SPT 7 Union of Education Professionals and Technicians of the State of Táchira, the Social Movement 10 "The Voice of SIDOR Workers" (MS10) and the Association of Retirees and Pensioners of Alcasa (AJUPAL), received on 30 September 2020; the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), with the support of the International Organisation of Employers (IOE), received on 1 October 2020; the Confederation of Autonomous Trade Unions (CODESA), the General Confederation of Labour (CGT) and the National Union of Workers of Venezuela (UNETE), received on 1 October 2020; the ASI and the National Union of Men and Women Public Officials in the Legislative Career Stream, and Men and Women Workers at the National Assembly (SINFUCAN), received on 5 October 2020; and the Federation of Workers of the State of Bolivar (FETRA-BOLIVAR), received on 5 November 2020. Finally, the Commission takes note of the observations of the Bolivarian Socialist Confederation of City, Country and Fishing Workers of Venezuela (CBST-CCP) received on 3 December 2020, stating that the CBST-CCP has managed, in coordination with the Government and despite adverse conditions, to maintain compliance with the Convention in the course of 2020. ***The Committee requests the Government to send its observations in this regard.***

*Civil liberties and trade union rights. Climate free from violence, threats, persecution, stigmatization, intimidation or any other form of aggression, in which the social partners are able to exercise their legitimate activities, including participation in social dialogue with full guarantees.* The Committee notes that the Commission of Inquiry recommended: (i) the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union activities, and the adoption of measures to ensure that such acts do not recur in future; (ii) cessation of the use of judicial proceedings and preventive and non-custodial measures, including the subjection of civilians to military jurisdiction, for the purpose of undermining freedom of association; (iii) the immediate release of any employer or trade unionist who is imprisoned in relation to the exercise of the legitimate activities of their organizations, as is the case of Mr Rubén González and Mr Rodney Álvarez; (iv) the independent investigation without delay of all allegations of violence, threats, persecution, stigmatization, intimidation and any other forms of aggression that have not been duly elucidated, with a view to clarifying responsibilities and identifying the perpetrators and instigators, while ensuring the adoption of appropriate protection, penalization and compensation measures; (v) the adoption of the necessary measures to ensure the rule of law, and particularly the independence from the executive authorities of the other branches of State authority; and (vi) the organization of training programmes with the ILO to promote freedom of association, tripartite consultation and social dialogue in general, including on full respect for essential conditions and basic rules of social dialogue, in accordance with international labour standards.

In this regard, the Committee notes that the Government: (i) while regretting the slowness of the justice system, asserts that this does not signify impunity, that the actions of the executive authority with regard to the judiciary are taken on the basis of the principle of the separation of powers, that no person who commits a military offence can avoid trial by a natural judge of the military courts, that the judicial proceedings and preventive and non-custodial measures provided for in the legal system are under no circumstances used to undermine freedom of association or any other right and that the legitimate activities of employers and workers and their leaders do not constitute a crime in the country; (ii) indicates that summonses and preventive detentions for the purpose of conducting investigations and taking statements are intended to clarify the facts of each case and none of this can be interpreted as harassment, threats, intimidation or persecution; (iii) states that it continues to urge the security agencies and national justice bodies to conduct independent and transparent investigations and proceedings without delay with a view to clarifying the responsibilities of the perpetrators and instigators and ensuring the adoption of appropriate protection, penalization and compensation measures (the Government explains that any financial compensation or the payment of damages are not automatic and are only referred to the judicial authorities at the request of the interested party); and (iv) indicates that it continues to strengthen social dialogue and that, despite the COVID-19 pandemic, high-level meetings and dialogue round tables have been held between the Government and representatives of employers' organizations in the country, including FEDECAMARAS (in this regard, it refers to statements by employers' leaders – of FEDECAMARAS and its affiliates – supposedly recognizing the existence of a dialogue between the private sector and the Government).

Furthermore, the Committee welcomes the partial follow-up to one of the recommendations of the Commission of Inquiry through the granting of a pardon to Mr Rubén González, by the Decree of 31 August 2020 of the President of the Bolivarian Republic of Venezuela. However, the Committee notes with ***regret*** that the Government has not proceeded with the release of the trade unionist Mr Rodney Álvarez and does not report any other tangible progress regarding the above-mentioned recommendations relating to civil liberties and trade union rights.

In addition, the Committee notes that numerous observations received from the social partners allege the absence of progress in giving effect to these recommendations and also additional violations of the Convention:

(i) FEDECAMARAS indicates that there has been no progress and highlights the persistence of expressions of disrespect, disparagement and defamation against it (as illustrated by the derogatory, stigmatizing or discrediting remarks against FEDECAMARAS and against independent trade unionism contained in the Government's reply of 27 December 2019 to the report of the Commission of Inquiry). FEDECAMARAS states that it cannot be argued that either the limited meetings held between it and the Government to resolve operational issues in the context of the pandemic or the patchy responses aimed at tackling the crisis can be regarded as effective social dialogue, or even bipartite, especially when not the slightest consideration was given in these contacts to matters covered by the Commission of Inquiry's report. In this regard, and in view of the fact that the round tables recommended in the report have not been established, FEDECAMARAS and independent workers' organizations (including the CTV, UNETE, ASI, CGT and CODESA confederations) have launched an initiative for bipartite dialogue on the basis of the "Bipartite manifesto for decent and productive work and social justice".

(ii) The CTV alleges that there has been no reduction in the persecution of workers' representatives (referring to several examples, such as the detention of the organizational secretary of the Union of the Socialist Fisheries and Aquiculture Institute (SINTRAPESCAVE) after making complaints against the authorities of the Institute for failure to uphold job-related benefits); that the courts continue to be used as a tool for restricting freedom of association, referring, inter alia, to the detention in February 2020 of leaders of the Single Union of Employees of the Sucre State Executive Authorities (SUEPPLES) during a peaceful protest at which they were calling on the Sucre government to pay debts to the workers, these leaders being accused of incitement to hatred, unlawful association and disruption of public order; and to the detention measure issued against a leader of the health union in the state of Monagas who denounced the meagre resources of the Dr Manuel Núñez Tovar University Hospital for tackling the pandemic and was accused of incitement to hatred, causing anxiety for the community, and unlawful association; and that the national executive branch controls almost all the public authorities of the State, except for the National Assembly, no measures having been taken to restore the rule of law in the country.

(iii) The ASI confederation denounces the killing of another trade unionist in the construction sector in Sucre in 2019 and the detention of two trade unionists from the Agropatria enterprise. UNETE, CODESA and the CGT allege that the Government's violations of the Convention have grown worse since the publication of the Commission of Inquiry's report. Similarly, FAPUV states that acts of anti-union violence, threats and persecution by State officials are continuing, referring in this regard to new complaints presented to the Committee on Freedom of Association (such as Cases Nos 3385 and 3374) and to the preliminary study published on 1 May 2020 by PROVEA, a non-governmental organization for the defence of human rights, concerning the follow-up to the recommendations of the Commission of Inquiry, in which many new cases are reported of anti-union actions in violation of the aforementioned recommendations. FAPUV reports other new cases of similar violations described by trade unions with diverse leanings in various sectors, and it also refers to its joint communications with the ASI and the CTV describing additional specific cases of trade unionists and other workers detained for reporting situations related to the pandemic or for asserting their labour rights during it. In addition, it alleges that the anti-union use of judicial proceedings persists, providing details of specific cases of trade unionists subjected to criminal proceedings or already convicted, with non-custodial measures involving periodic appearances before the authorities and, additionally in one case, a ban on leaving the country. On top of this, there are measures imposed orally, such as a ban on making statements. FAPUV also emphasizes that the detailed conclusions of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, presented on 16 September 2020 to the 45th session of the United Nations Human Rights Council, confirm the concerns of the Commission of Inquiry regarding deficiencies with respect to the rule of law and the separation of powers in the country.

***Expressing deep concern at the almost total absence of progress and at the gravity of the allegations of additional violations made in the observations of the social partners alluded to, the Committee reiterates the recommendations of the Commission of Inquiry set forth above relating to civil liberties and trade union rights. In this regard, the Committee firmly urges the Government to take the necessary measures to give immediate effect to the recommendations and also to investigate and take action promptly with regard to the new specific allegations referred to above in order to ensure a climate free from violence, threats, persecution, stigmatization, intimidation or any other form of aggression, in which the social partners are able to exercise their legitimate activities, including participation in social dialogue with full guarantees.***

*Articles 2 and 3 of the Convention. Respect for the autonomy of employers' and workers' organizations, particularly in relation to the Government or political parties, and suppression of all interference and favouritism*

*by the State authorities.* The Committee notes that the Commission of Inquiry recommended: (1) the adoption of the necessary measures to ensure in law and practice that registration is a mere administrative formality and that in no event can it imply previous authorization, and to proceed to the immediate registration of the ASI confederation; (2) the elimination of "electoral abeyance" and the reform of the rules and procedures governing trade union elections, so that the intervention of the National Electoral Council (CNE) is really optional and does not constitute a mechanism for interference in the life of organizations, the pre-eminence of trade union independence is guaranteed in election processes and delays are avoided in the exercise of the rights and activities of employers' and workers' organizations; (3) the elimination of any other use of institutional machinery or types of action that interferes in the independence of employers' and workers' organizations and their mutual relations. In particular, the Commission recommended the adoption of any necessary measures to eliminate the imposition of control institutions or mechanisms, such as Workers' Production Boards (WPBs), which may in law or in practice restrict the exercise of freedom of association; (4) the establishment, with ILO assistance, of criteria that are objective, verifiable and fully in accordance with freedom of association to determine the representativeness of both employers' and workers' organizations; and (5) in general, the elimination in law and practice of any provisions or institutions that are incompatible with freedom of association, including the requirement to provide detailed information on members, taking into account the conclusions of the Commission and the comments of the ILO supervisory bodies.

In this regard, the Committee notes the Government's assertion that Venezuelan labour law and practice have always been advanced and that what is not provided for in the ILO Conventions – minimum standards – can be set out or developed for workers by national legislation. The Government states that this is the case with the WPBs and in this regard reiterates what was already indicated in its response to the Commission of Inquiry: that the Act establishing them provides that they "are not by their nature trade unions and in the exercise of their functions shall not carry out trade union activities, nor impede or interfere in the exercise of the right to freedom of association and collective bargaining"; and that they are not supervisory mechanisms, nor do they undermine the exercise of freedom of association. With regard to the representativeness of workers' organizations, the Government indicates that it sent the ILO a request for technical assistance in March 2020 and affirms in general that it has never objected to the specialized technical assistance offered by the ILO in the context of the Convention.

The Committee welcomes the partial effect given to one of the recommendations of the Commission of Inquiry, in that the National Registry of Trade Unions (RNOS), attached to the Ministry of People's Power for the Social Process of Labour, issued the registration certificate for the ASI confederation on 28 February 2020, four years after the initial application for registration.

With regard to the Government's request for technical assistance in relation to a specific recommendation – the establishment of objective and verifiable criteria which are fully in accordance with freedom of association to determine the representativeness of employers' and workers' organizations – the Committee observes that the Commission of Inquiry emphasized that, to implement its recommendations, it is necessary to ensure the essential conditions and basic standards for effective social dialogue with full guarantees and genuine impact. According to the Commission of Inquiry, this includes: the absence of any form of violence, aggression, harassment or intimidation; respect for the independence and autonomy of employers' and workers' organizations; recognition of the representative partners; mutual respect, including in the tone of the debate; the agreed determination of forms and timelines that allow for genuine and constructive participation and discussion; adherence to good faith and confidence building; and a genuine commitment to honour the agreements concluded. In this regard, the Committee observes that because the recommendations are inter-related and must be considered as a whole, they should be implemented in a holistic manner and in a climate where the social partners can exercise their legitimate activities, including participation in social dialogue with all guarantees and also full respect for the autonomy of employers' and workers' organizations.

Furthermore, the Committee notes with ***regret*** that the Government does not report any other progress on its part regarding the above-mentioned recommendations relating to respect for the autonomy of employers' and workers' organizations and also the suppression of any interference and favouritism by State authorities. The Committee also notes that numerous observations received from the social partners allege that no progress has been made as regards giving effect to these recommendations and that violations of the Convention persist.

The Committee notes the allegation of FEDECAMARAS that no progress has been made and emphasizes that the exclusion of FEDECAMARAS and discrimination towards it persist and favouritism continues to be shown to FEDEINDUSTRIA, the employers' organization with links to the Government and its political agenda (as illustrated by the meeting on 22 January 2020 between the President of the Republic and the Government, on the one hand, and small and medium-sized enterprises, on the other, at which FEDEINDUSTRIA reportedly played a significant part, whereas no invitation had been issued to FEDECAMARAS or its chambers of commerce representing small and medium-sized industries). Furthermore, FEDECAMARAS alleges that the Government, instead of giving effect to the recommendation

to abolish the WPBs, has continued to strengthen and promote them: (a) by promotional public activities undertaken by the President of the Republic (such as his participation in February 2020 in an action of the State petroleum company, at which he reportedly emphasized that the key instrument for transforming the economy, society and productive relationships are the WPBs, with the WPB supervisory body in that industrial sector having been established on that occasion); (b) by granting WPBs functions for controlling employers in the area of price fixing; and (c) by campaigns to promote and install WPBs in workplaces throughout the country (through national implementation in June 2020 or the holding of a public action with the President of the Republic on 3 September 2020, assigning the WPBs the task of being protagonists in the social process of labour, supported by the "combat corps" of the working class). FEDECAMARAS considers that there is clear interference from the Government and the imposition of its political and ideological agenda within labour relations, restricting the rights established in the Convention, and asserts that this interference from the WPBs not only affects workers' organizations but also violates the freedom of association of employers, in obstructing relations between employers and workers and their organizations.

With regard to the observations received from workers' organizations, the Committee notes the statement of the CTV that, apart from the registration of the ASI, no progress whatsoever has been made with respect to this set of recommendations. It indicates that, on the contrary, cases of non-observance have persisted – as illustrated by the acceleration in the creation of mechanisms to interfere in the autonomy of trade unions and employers' organizations, such as the WPBs (according to statements from the President of the Republic himself, a total of 2,208 WPBs have been established, with the Ministry of Labour having declared that the WPBs are an organizational force of great importance because they will enable votes to be mobilized for the next elections). In addition, UNETE, CODESA and the CGT state that the WPBs – civic-military entities imposed on all workplaces and directly dependent on the Government – imply government interference in the operation of labour relations which restricts the exercise of freedom of association. While indicating their ongoing proliferation and the promotion thereof, the aforementioned confederations warn that the WPBs are the Government's instrument of social control for eliminating the trade union movement. In addition, FAPUV: (i) indicates, with reference to specific examples, that government actions persist to disregard and attack legitimate majority trade unions and to encourage or favour minority organizations close to the Government; (ii) warns that the registration of trade unions continues to be an obstacle in relation to the exercise of freedom of association and that organizations which are up to date in their registration are increasingly few; (iii) states that interference from the State persists through proceedings relating to trade union elections – referring to various cases in which "electoral abeyance" continues to block action by workers' organizations; (iv) emphasizes in this regard that a decision is needed from the labour authorities to secure recognition of the results of elections conducted by trade unions without intervention from the CNE; (v) states that in January 2020 more WPBs were sworn in and denounces the fact that at the State petroleum company the WPBs are taking the place of trade unions and their leaders, that at educational establishments in the state of Sucre the authorities only allow entry to WPBs, arguing that trade unionists are "miserable and stateless", and that the SUTISS trade union has been disregarded de facto (with the majority of its committee forced unlawfully into retirement) and replaced by WPBs, which do not allow the SUTISS leaders to enter the plant; and (vi) in relation to the same matter, warns about the integration of Bolivarian militias into basic industries in Guyana.

***Reiterating its deep concern at the almost total absence of progress, and in view of the allegations of persistent violations of the Convention that would confirm the fears expressed in its previous comments (for example, regarding Workers' Production Boards (WPBs) and their negative impact on the exercise of freedom of association), the Committee refers to the conclusions of the Commission of Inquiry and reiterates its recommendations set forth above regarding the need to ensure respect for the autonomy of employers' and workers' organizations, particularly in relation to the Government or political parties, and regarding the suppression of all interference and favouritism by the State authorities. Among other specific recommendations, this includes ceasing the imposition of control institutions or mechanisms which, like the WPBs, can restrict the exercise of freedom of association in law or in practice. The Committee firmly urges the Government to take the necessary measures to give immediate effect to all these recommendations.***

*Articles 2 and 3. Legislative issues.* The Committee recalls that it has been asking the Government for several years to consult the most representative workers' and employers' organizations and take the necessary steps to revise the following aspects of the national legislation with a view to bringing it into conformity with the Convention:

– section 388 of the Basic Labour Act (LOTTT), to remove the requirement for unions to provide the list of their members to the National Registry of Trade Unions;
– sections 367 and 368 of the LOTTT, to remove, in the definition of the objectives to be pursued by trade unions, all those that relate to the specific responsibilities of the public authorities;

- section 402 of the LOTTT and other provisions that are in force so that: (i) they do not permit a non-judicial authority (such as the CNE) to decide on appeals respecting trade union elections; (ii) the principle of "electoral abeyance" is eliminated in law and in practice; (iii) the requirement to notify the CNE of the electoral schedule is removed; and (iv) the requirement to publish the results of trade union elections in the Electoral Gazette as a condition for their recognition is removed;
- section 387 of the LOTTT, so that the eligibility of leaders is not conditional on having convened trade union elections within the prescribed time frame when they were leaders of other trade unions;
- section 395 of the LOTTT, to remove the provision in the Act establishing that failure of members to pay their trade union dues invalidates their right to vote;
- section 403 of the LOTTT, to eliminate the imposition of specific voting systems on trade unions;
- section 410 of the LOTTT, to eliminate the system of holding recall referendums to remove trade union officers;
- section 484 of the LOTTT, to ensure that either a judicial or an independent authority determines the areas or activities which may not be subject to stoppages during a strike on the grounds that they prejudice the production of essential goods or services which would cause damage to the population; and
- section 494 of the LOTTT, to ensure that the system for the appointment of the members of the arbitration board in the event of a strike in essential services guarantees the confidence of the parties in the system.

The Committee also notes that the Commission of Inquiry – which did not enter into some of these specific legislative aspects on the grounds that they were not issues covered by the complaint – recommended the submission to tripartite consultation of the revision of the laws and standards, such as the LOTTT, giving effect to the Convention that raise problems of compatibility with it in light of the conclusions of the Commission of Inquiry and the comments of the ILO supervisory bodies. The Committee observes the Government's statement that it has taken note of the suggestions for legislative reforms to improve Venezuelan legislation but that, although those suggestions could be presented in due course to the National Assembly as the competent body, it is not in a position to proceed in this regard since the National Assembly remains in contempt (according to the rulings of the Supreme Court of Justice), and so its actions are null and void and it is unable to deal with legislative reforms. In this regard, the Committee considers that this should not have prevented the Government, before conveying the modifications to the legislative body, from giving effect to the Commission of Inquiry's recommendation to submit this major task to tripartite consultation. ***The Committee reiterates the recommendation and requests the Government, in the context of the tripartite dialogue round table referred to below, to submit to tripartite consultation without further delay the revision of the laws and standards which give effect to the Convention and raise problems of compatibility with it, starting with the LOTTT, in light of the conclusions of the Commission of Inquiry (such as those relating to trade union registration, "electoral abeyance" or the WPBs) and the previous comments of this Committee.***

The Committee expresses its ***deep concern*** at the numerous serious violations of the Convention recorded by the Commission of Inquiry in its report, drawing attention to the existence of a complex web which harasses and undermines the action of employers' and workers' organizations that are not close to the Government. Although the Government once again asserts that it is continuing to work on improving compliance with the ratified Conventions, and even though the Committee recognizes that, as the Government indicates, the situation of the COVID-19 pandemic has also affected the country, the Committee is bound to note with ***deep regret*** the lack of action regarding almost all the recommendations that the ILO supervisory bodies, including the Commission of Inquiry in particular, have been making with regard to observance of the Convention. Even though the Commission of Inquiry provided a time frame of one year to give effect to its recommendations, this time frame has elapsed and, apart from the release of one trade union leader and the registration of one workers' organization, the Government has not made progress on giving effect to the recommendations which go to the core of the issues examined by the Commission of Inquiry. In particular, the Government has not taken any action to establish and convene dialogue round tables in support of the implementation of the recommendations in the report (which states that before March 2020 the round tables should have been established with a schedule of meetings).

***In this regard, the Committee firmly urges the Government to proceed immediately with the establishment of the aforementioned round tables in the manner indicated in the report of the Commission of Inquiry: (i) a round table for tripartite dialogue which includes all representative organizations; (ii) a round table for dialogue between the authorities concerned and FEDECAMARAS on questions relating to that organization; and (iii) another round table for representative workers' organizations to address subjects that are of specific concern to them.***

***Taking note of the Government's stated willingness to receive technical assistance from the ILO, and of the requests of social partners in this regard, the Committee considers it vitally important that this***

***technical assistance is determined in a tripartite manner in the context of the dialogue round tables and in light of the considerations expressed above.***

***The Committee is aware of the ongoing consideration being given by the Governing Body to the follow-up of the report of the Commission of Inquiry. In view of the grave violations of labour rights described above, the systemic failure to comply with a number of ILO Conventions and the serious lack of cooperation from the Bolivarian Republic of Venezuela authorities with regard to its obligations, the Committee considers it critical that within the context of the ILO standards the situation in the country be given the full and continuing attention of the ILO and the ILO supervisory system in order to obtain robust and effective measures that can bring about compliance in law and in practice with the Conventions concerned.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Zimbabwe

### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2003)

#### *Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO*

#### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the observations submitted by the Zimbabwe Congress of Trade Unions (ZCTU), received on 30 August 2019 and 29 September 2020, and by the International Trade Union Confederation (ITUC), received on 1 September 2019 and 16 September 2020, which refer to the issues addressed by the Committee below. The Committee further notes that the ITUC and the ZCTU 2020 observations recall that, since the January 2019 crackdown on the ZCTU-organized general strike, the ZCTU President and General Secretary remain charged with subversion and are under strict release conditions, banned from traveling and forced to check in regularly at the police station. Both organizations allege further retaliatory acts against both trade union leaders as well as leaders of the Amalgamated Rural Teachers Union (ARTUZ), following protests organized by the ZCTU in 2020. The ITUC alleges, in particular, that on 17 July 2020, the ARTUZ President had his home broken into by armed personnel in the middle of the night in an attempt to abduct him. The ZCTU alleges that earlier, in May 2020, the ARTUZ Secretary for Gender was arrested, tortured and left for dead after police accused her of inciting violence. According to the ITUC, the ZCTU is being attacked and labelled as a terrorist organization and its leaders face daily threats, harassment and persecution by the authorities. The ITUC and the ZCTU also allege repression against workers' protests in the health sector. ***The Committee expresses its concern at these serious allegations, and requests the Government to provide its comments on the matter.***

The Committee notes the discussion that took place in the Conference Committee in June 2019 concerning the application of the Convention. The Committee observes that the Conference Committee noted concern regarding the Government's failure to implement specific elements of the recommendations of the 2009 Commission of Inquiry. The Conference Committee noted persisting issues of non-compliance with the Convention, including allegations of violations of the rights of the freedom of assembly of workers' organizations. The Conference Committee also noted the Government's stated commitment to ensure compliance with its obligations under the Convention and to the process of social dialogue, including through the framework for Tripartite Negotiating Forum (TNF). The Committee called upon the Government to: (i) refrain from the arrest, detention or engagement in violence, intimidation or harassment of trade union members conducting lawful trade union activities; (ii) ensure that the allegations of violence against trade union members are investigated, and where appropriate, impose dissuasive sanctions; (iii) repeal the Public Order and Security Act (POSA), as it has committed to do so, and ensure that the replacement legislation regarding public order does not violate workers' and employers' freedom of association in law and practice; (iv) revise or repeal the Public Service Act and, as necessary, the Health Services Act, to allow public sector workers freedom of association in consultation with the social partners; (v) amend the Labour Act, in consultation with workers' and employers' organizations, to come into compliance with the Convention; and finally (vi) continue to engage in social dialogue with the workers' and employers' organizations in connection with the framework of the TNF. The Conference Committee urged the Government to accept a direct contacts mission of the ILO to assess progress before the next International Labour Conference.

The Committee welcomes the Government's commitment to receive a direct contacts mission of the ILO requested by the Conference Committee. The Committee notes the Government's indication that the mission, scheduled for May 2020, had to be postponed due to COVID-19, and its hope that the mission will be rescheduled consistent with Covid-19 travel guidelines.

*Trade union rights and civil liberties.* The Committee recalls that it had previously noted with concern the allegations submitted by the ITUC and the ZCTU regarding: the injuries suffered by the ZCTU personnel when the union's office came under attack by soldiers during the demonstrations on 1 August 2018; cases of strike action being banned and criminalized; and denial or delay of trade unions registration. The Committee noted the information provided by the ZCTU in 2019, according to which the Government set up a commission of inquiry to investigate the police and military action during the August 2018 demonstrations. According to the ZCTU, the Commission found out that six people were killed and 35 injured as a result of the military and police action and recommended a payment of compensation for losses and damages caused. The ZCTU expressed its concern that no compensation has been paid to its staff members affected nor for the damages to its building, and that the perpetrators have not been made accountable for their action.

The Committee notes that in its report, the Government indicates that the objective of the commission of inquiry was to investigate the politically motivated disturbances of 31 August 2018. The commission produced a report and recommendations, which the Government has accepted. The Government indicates that it is working on the compensation modalities and will write to the ZCTU requesting it to submit compensation claims. ***The Committee requests the Government to provide information on all progress made in giving effect to the commission's recommendations.***

Regarding the ZCTU's allegation made in 2019 that the Footwear Tanners and Allied Workers Union of Zimbabwe remained unregistered, the Committee welcomes the Government's indication that the Union was registered on 30 January 2020.

The Committee recalls that it had previously noted that a training curriculum on freedom of association was being developed for the dissemination and use by police officers. The Committee noted with concern the ZCTU's 2019 allegation that it has not observed a change in behaviour on the part of the police officers and that the situation on the ground has turned for the worst with serious attacks on civil liberties.

In this respect, the Committee notes the Government's indication that the training curriculum on freedom of association has been mainstreamed in the Police training manuals, and that the Training Centres have been conducting the trainings. The Government informs that some of the incidences reported by ZCTU are related to demonstrations that were conducted in violation of COVID-19 lockdown measures. Whilst the Government recognizes the need to uphold the principles of freedom of association, it considers that lockdown measures had to be respected to preserve human life against the backdrop of rising COVID-19 cases. The Government further indicates that the issue of alleged clashes between police and trade unions and alleged harassment by the police at roadblocks/checkpoints is an ongoing subject of discussion under the auspices of the Tripartite Negotiating Forum (TNF). According to the Government, the TNF Social Cluster was tasked to engage the Police and develop a standard checklist for use by security forces at checkpoints; it is in that context that ease of passage of workers during lockdown was facilitated, including ease of passage for trade unions and employers' organizations. The Government expresses the hope that continued engagement under the TNF will strengthen collaboration between law enforcement organs and trade unions. ***The Committee requests the Government to provide detailed information on the work carried out by the TNF Social Cluster and on the progress in its engagement with the police forces***. ***The Committee also requests the Government to provide detailed comments on the ITUC and ZCTU 2020 allegations of several new instances of violation of civil liberties in the country.***

*Public Order and Security Act (POSA).* The Committee recalls that it had previously requested the Government to review the application of the POSA, in consultation with the social partners, with a view to making proposals to ensure with greater clarity that trade union activities were outside its scope. The Committee notes the enactment of the Maintenance of Peace and Order Act (MOPA) in November 2019. The Committee further notes the Government's indication that before its adoption, the Bill was subject to public stakeholders' consultations in 2019 in which all stakeholders, including the ZCTU, had the opportunity to raise their concerns or propose changes. The Government indicates that the views from these consultations were taken into consideration. The Government further informs that consultative meetings with the social partners to unpack provisions of the MOPA had been scheduled prior to the lockdown measures brought by COVID-19 pandemic and it hopes to reschedule such meetings once lockdown measures are removed. The Committee notes that, similar to the POSA in the past, relevant sections of the MOPA do not apply to public gatherings held by a registered trade union for bona fide trade union purposes for the conduct of business in accordance with the Labour Act. In this respect, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 3339 (see 392nd Report, October 2020). ***In view of the concerns previously raised by the ILO supervisory bodies regarding the application of the POSA to trade union activities and its similarity to the MOPA, the Committee expects that the consultative meeting with the social partners to which the Government refers will be held as soon as possible. The Committee requests the Government to provide detailed information on the developments in this regard.***

## Labour law reform and harmonization

*Labour Act*. In its previous comments, the Committee noted with concern that, despite its numerous requests, some of which predate the 2009 Commission of Inquiry, there was no concrete progress in amending the Labour Act so as to bring it into conformity with the Convention. Noting that the social partners were concerned that the legislative reform was slow and haphazard, leading to the perception of a lack of political will to carry it out, the Committee expected that the labour law review would be concluded in full consultation with the social partners, without further delay. The Committee further noted the ZCTU's submission that no legislative changes had occurred and that the fourth version of the draft Labour Bill did not address the requests made by the Commission of Inquiry nor by this Committee. The Committee also noted that at its meeting in June 2019, the Committee on Freedom of Association urged the Government to amend the Labour Act without further delay in consultation with the social partners (see 389th Report, June 2019, Case No. 3128, paragraphs 103–109).

The Committee notes the Government's indication that the draft Labour Bill had been thoroughly examined by the Government and the social partners at a stakeholders' meeting convened from 30 September to 1 October 2019 and that amendments were made taking into consideration the proposals by the social partners. An agreement was reached with the social partners to allow the drafters to polish the Bill in line with the outcomes of the meeting. The revised Bill was submitted to the social partners for their comments. The Government points out that while the employers' side consented to the revised Bill and proposed that the Bill be processed, the labour side submitted new requests for amendments that had not been discussed in previous meetings. These and subsequent requests were submitted to the Attorney General's Office with the view to finalize the draft Bill. The Government indicates that there has been an agreement to fast track the Bill in its current form to ensure that it is tabled before the 9th Parliament of Zimbabwe as soon as possible.

*Public Service Act and Health Services Act*. The Committee had also previously requested the Government to ensure, in consultation with the social partners, that under the Public Service Act, staff of the Civil Service Commission enjoyed the rights enshrined in the Convention and that legislative provisions dealing with the registration of organizations of public servants would be sufficiently clear so as not to give rise to possible interpretation of the law as giving discretionary power to the authorities to refuse the registration of an organization.

The Committee notes the Government's indication that there have been consultations with worker representatives of the Civil Service under the auspices of the National Joint Negotiation Council, which is a bipartite Collective Bargaining Chamber between the Government and worker representatives in the Civil Service. The Government indicates that this matter was raised in the TNF meeting held on 7 February 2020, and that the Civil Service worker representatives of the TNF expressed satisfaction with the consultations that had been conducted so far. The Committee further notes the Government's indication that the amendment of the Public Service Act is currently with the Attorney General's Office, waiting for necessary constitutional amendments that have a bearing on the Act, and that the Constitutional Amendment Bill is currently under Parliamentary public consultations.

The Committee recalls that it had previously noted the ZCTU's indication that the Health Services Act required reforms as it mostly duplicated the Public Service Act, in particular regarding freedom of association and collective bargaining rights. The Committee notes the Government's indication that it is currently embarking on a re-organization exercise of the health sector to address the challenges including those faced during the COVID-19 period. It indicates that there is a commitment for a holistic review of the enabling legislation and that this will also be brought to the TNF for consideration.

The Committee notes with ***concern*** that according to the most recent ZCTU's observations, there has been no progress with respect to the legislative changes requested by the ILO supervisory bodies and that the process of the tripartite dialogue on the labour law reform remains uncompleted. The Committee further notes the concerns expressed by both the ZCTU and the ITUC regarding the functioning of the social dialogue institutions, the TNF and the Bipartite Negotiating Panel in the health sector.

***While noting the information provided by the Government, the Committee expects that the Labour Act, Public Service Act and Health Services Act will be brought into conformity with the Convention without further delay and in full consultation with the social partners, and requests the Government to provide information on all progress made in this regard, including copies of the legislative acts as soon as they are enacted.***

The Committee noted in its previous comment that the Tripartite Negotiating Forum (TNF) Act was enacted and that the TNF was launched on 5 June 2019. In this respect, the Committee notes the Government's indication that since the enactment of the TNF, there has been a lot of engagement with the social partners with a view to strengthening social dialogue in Zimbabwe. The Government reports on a number of meetings held to discuss the issues of the TNF's terms of reference and operationalisation. The Government further informs that despite the limitations stemming from the COVID-19 lockdown measures, the TNF has held a number of meetings virtually, mostly on matters to mitigate challenges

induced by COVID-19 and that the recommendations of the COVID-19 National Taskforce emanated from the TNF discussions. The Committee notes the ZCTU indication that while it brought some of the issues relating to the protective measures against COVID-19 to the TNF, no discussions have taken place. ***The Committee requests the Government to provide its observations thereon.***

***The Committee expects that the operationalization of the TNF will allow for labour law reform and public service legislation harmonization to be concluded without further delay.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)

The Committee notes the observations submitted by the International Trade Union Confederation (ITUC) and the Zimbabwe Congress of Trade Unions (ZCTU), received on 16 and 29 September 2020, respectively, which refer to the issues addressed by the Committee in the present comment. The Committee further notes that the ZCTU also alleges that collective bargaining rights have been seriously diminished during the COVID-19 era as some employers have taken advantage of the pandemic and ignored the call for negotiations to alleviate the plight of workers. Finally, the ZCTU indicates that it brought some of the issues relating to the protective measures against COVID-19 to the Tripartite Negotiating Forum (TNF) but no discussions have taken place. The Committee notes that, similarly, the ITUC alleges that the Government has unilaterally declared that it would not be engaging in any form of collective bargaining in the health sector, thereby rendering the Bipartite Negotiating Panel for the health sector useless. ***The Committee requests the Government to provide its comments thereon.***

### *Follow-up to the 2009 recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO*

#### Labour law reform and harmonization

The Committee had previously noted with concern that, despite its numerous requests, some of which predate the 2009 Commission of Inquiry, there was no concrete progress in amending both the Labour Act and the Public Service Act so as to bring them into conformity with the Convention. It had therefore urged the Government to make all necessary efforts to ensure that the process of reviewing the labour and public service legislation with a view to ensuring its conformity with the Convention would move forward without further delay and in full consultation with the social partners.

*Labour Act.* In its previous comment, the Committee had noted the Government's indication that following the adoption of the Labour Law Reform Principles by the Cabinet, in December 2016, and a number of consultative meetings held in 2017 and 2018, the final draft of the Labour Amendment Bill was finalized and ready to be tabled before Cabinet and then Parliament. The Committee had, however, noted with concern the ZCTU's allegation that the draft of the Labour Amendment Bill deliberately ignored the Committee's observations and did not include any provision setting clearly the protection of workers and their representatives against anti-union discrimination.

The Committee notes the Government's indication that the draft Bill had been thoroughly examined by the Government and the social partners at a stakeholders' meeting convened from 30 September to 1 October 2019 and that amendments were made taking into considerations the proposals by the social partners. An agreement was reached with the social partners to allow the drafters to polish the Bill in line with the outcomes of the meeting. The revised Bill was submitted to social partners for their comments. The Government points out that while the employers' side consented to the revised Bill and proposed that the Bill be processed, the labour side submitted new requests for amendments that had not been discussed in previous meetings. These and subsequent requests were submitted to the Attorney General's Office with the view to finalize the draft Bill. The Government indicates that there has been an agreement to fast track the Bill in its current form to ensure that it is tabled before the 9th Parliament of Zimbabwe as soon as possible.

*Public Service Act and the Health Services Act*. The Committee had previously noted the Government's indication that the principles to amend the Public Service Act were approved by the TNF and further consultations were undertaken within the National Joint Negotiation Council (NJNC). The Government had further indicated that the Attorney General's Office was in the process of drafting the bill and that the social partners would be consulted on the draft.

The Committee notes the Government's indication that the amendment of the Public Service Act is with the Attorney General's Office, waiting for necessary constitutional amendments that have a bearing on the Act and that the Constitutional Amendment Bill is currently under Parliamentary public consultations. Regarding the Health Services Act, the Government informs that it is currently embarking on a re-organization exercise of the health sector to address the challenges including those faced during the COVID-19 period. It indicates that there is a commitment for a holistic review of the enabling legislation and that this will also be brought to the TNF for consideration.

The Committee notes with ***concern*** that according to the most recent ZCTU's observations, there has been no progress with respect to the legislative changes requested by the ILO supervisory bodies and that the process of the tripartite dialogue on the labour law reform remains uncompleted. The Committee further notes the concerns expressed by both the ZCTU and the ITUC regarding the functioning of the social dialogue institutions, the TNF and the Bipartite Negotiating Panel in the health sector. ***While noting the information provided by the Government, the Committee expects that the labour and public service legislation will be brought into conformity with the Convention without further delay in full consultation with the social partners and requests the Government to provide information on all progress made in this regard.***

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee had previously noted that section 56(2) of the Special Economic Zones Act (2016) did not recognize the right to collective bargaining and gave the power to determine conditions of work to the Special Economic Zones Authority and the Minister. It had therefore requested the Government to take the necessary measures to amend the Act, in consultation with the social partners, so as to bring it into conformity with the Convention and to provide information on any developments in this regard.

The Committee notes with ***interest*** the Government's indication that the Special Economic Zones Act was repealed and replaced by the Zimbabwe Investment Development Agency Act (ZIDA). The Committee notes the Government's indication that pursuant to section 11 of the ZIDA, the Labour Act supersedes any law when it comes to employment issues and that the ZIDA Act has also established a One-Stop Investment Services Centre, which consists of representatives from several government ministries/departments including the Ministry of Labour, who have a mandate to assist and advise investors. ***The Committee requests the Government to provide information on the application of the Convention in practice in the special economic zones and to indicate the number of collective agreements in force for such zones.***

### Application of the Convention in practice

*Article 1. Adequate protection against acts of anti-union discrimination.* The Committee recalls that it had previously urged the Government to take all the necessary measures, without delay, to ensure effective protection against acts of anti-union discrimination in practice. In this respect it had also requested the Government to provide detailed information on any developments regarding an electronic case management system, which would assist in tracking labour dispute cases, particularly those relating to anti-union discrimination the Government was in the process of developing with the assistance of the ILO.

The Committee notes the Government's indication that it has developed a concept note, which was shared with social partners and the ILO, leading to the engagement of a consultant in 2019 to develop the Software Requirements Specifications (SRS) of the electronic case management system. The SRS document was submitted to the ILO in May 2020 for standard check. Resources are being mobilized for the procurement of hardware equipment to operationalize the system. ***The Committee requests the Government to provide information on the developments in this regard.***

The Committee recalls that it had also requested the Government to provide its comments on the ZCTU's allegation of a widespread anti-union discrimination in the construction sector (where several members of the Zimbabwe Construction and Allied Trade Workers' Union would have been victims of assault and harassment, mainly in multinationals and foreign-owned companies, and their representatives denied access to companies' premises) as well as on other cases of anti-union discrimination.

The Committee notes that the Government disputes that there is a wide spread anti-union discrimination in the construction sector. It further notes the Government's indication that all alleged cases were investigated, that it has conducted joint inspections in areas alleged to have anti-union discrimination and has encouraged trade unions to report all such cases. ***The Committee encourages the Government to continue engaging with the social partners on all issues of application of the Convention in practice and to ensure that all allegations of violation are promptly investigated.***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 87** *(Algeria, Angola, Antigua and Barbuda, Australia, Bahamas, Barbados, Belgium, Bosnia and Herzegovina, Botswana, Burundi, Cambodia, Canada, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Croatia, Djibouti, Dominica, Ecuador, Eritrea, Eswatini, France, Gambia, Grenada, Haiti, Kyrgyzstan, Netherlands: Aruba, Philippines, Saint Lucia, Sao Tome and Principe, Somalia, Tajikistan, Timor-Leste, Turkey, Uzbekistan);* **Convention No. 98** *(Angola, Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil, Canada, Chile, Colombia, Comoros, Congo, Croatia, Czechia, Djibouti, Eswatini, Finland, France, Kyrgyzstan, San Marino, Solomon Islands, Somalia, South Sudan, Tajikistan, Timor-Leste);* **Convention No. 135** *(Antigua and Barbuda, Bosnia and Herzegovina, Burundi, Dominica);* **Convention No. 141**

*(Afghanistan, Albania);* **Convention No. 151** *(Albania, Bosnia and Herzegovina, Brazil, Philippines);* **Convention No. 154** *(Albania, Belize, Bosnia and Herzegovina, Czechia, Saint Lucia).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 11** *(Argentina, Azerbaijan, Bulgaria, Malaysia: Peninsular Malaysia and Sarawak)*; **Convention No. 87** *(Azerbaijan, Cuba, Czechia, Denmark: Faroe Islands, Estonia, Ethiopia, Finland, France: French Polynesia, French Southern and Antarctic Territories and New Caledonia, North Macedonia)*; **Convention No. 98** *(Azerbaijan, Bulgaria, Cuba, Denmark: Faroe Islands, Estonia, Ethiopia, France: French Polynesia, French Southern and Antarctic Territories and New Caledonia, North Macedonia*; **Convention No. 135** *(Argentina, Azerbaijan)*; **Convention No. 151** *(Argentina, Azerbaijan, Belgium)*; **Convention No. 154** *(Azerbaijan, Belgium, Brazil)*.

# Forced labour

## Belize

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1(c) and (d) of the Convention. Penalties involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes.* For many years, the Committee has been referring to section 35(2) of the Trade Unions Act, under which a penalty of imprisonment (involving an obligation to perform labour, by virtue of section 66 of the Prison Rules) may be imposed on any person employed by the Government, municipal authority or any employer in charge of supplying electricity, water, railway, health, sanitary or medical services or communications or any other service that may, by proclamation, be declared by the Governor to be a public service, if such person wilfully and maliciously breaks a contract of service, knowing or having reasonable cause to believe that the probable consequences will be to cause injury or danger or grave inconvenience to the community. The Committee has also noted that section 2 of the Settlement of Disputes (Essential Services) Act, Statutory Instrument No. 92 of 1981, declared the national fire service, postal service, monetary and financial services (banks, treasury, monetary authority), airports (civil aviation and airport security services) and the port authority (pilots and security services) to be essential services, and Statutory Instrument No. 51 of 1988 declared the social security scheme administered by the Social Security Branch an essential service.

The Committee has recalled in this respect that the imposition of sanctions involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes is incompatible with the Convention. It has noted that section 35(2) of the Trade Unions Act refers not only to injury or danger but, alternatively, to grave inconvenience to the community, and applies not only to essential services, but also to other services, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

The Government indicates in its report that one of the main tasks of the newly revived Labour Advisory Board is the revision of the national legislation, and that the Board has regrouped the legislation under revision into six topics, including trade unions' rights. The Government also states that, although trade unions' legislation has not yet been covered, the intention is to revise it in order to bring it into conformity with the international labour Conventions, and that the Committee's concern regarding section 35(2) of the Trade Unions Act will definitely be taken into consideration. ***While taking due note of this information, the Committee trusts that the process of the revision of the Trade Unions Act will be completed in the near future, so as to ensure that no sanctions involving compulsory labour could be imposed as a punishment for breaches of labour discipline or for peaceful participation in strikes.***

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

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

## Congo

### Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 2(2)(a) of the Convention.* 1. *Work exacted under compulsory military service laws.* For many years the Committee has been drawing the Government's attention to the fact that section 1 of Act No. 16 of 27 August 1981 establishing compulsory military service is not in conformity with the Convention. Under this provision, national service is instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation and has two components: military service and civic service. The Committee has repeatedly emphasized that work exacted from recruits as part of compulsory national service, including work related to national development, is not purely military in nature and is therefore contrary to *Article 2(2)(a)* of the Convention.

The Committee notes that the Government once again indicates that it is committed to repealing the above-mentioned Act and this will be seen in practice in the revision of the Labour Code, which is in progress. ***The Committee again expresses the strong hope that when the Labour Code is revised, the necessary steps will be taken to amend or repeal the Act establishing compulsory military service so as to bring the legislation into conformity with the Convention. The Government is requested to supply information on any progress made in this respect.***

2. *Youth brigades and workshops.* In its previous comments the Committee noted the Government's indication that Act No. 31-80 of 16 December 1980 on guidance for youth had fallen into disuse since 1991. Under this Act, the party and mass organizations were supposed to create, over time, all the conditions for establishing youth brigades and organizing youth workshops (type of tasks performed, number of persons involved, duration and conditions of their participation, etc.). The Committee once again notes the Government's indication that it is committed to repealing the above-mentioned Act and this will be seen in practice in the

revision of the Labour Code, which is in progress. ***The Committee expresses the strong hope that when the Labour Code is revised, the necessary steps will be taken to formally repeal Act No. 31-80 of 16 December 1980 on guidance for youth.***

*Article 2(2)(d). Requisitioning of persons to perform community work in instances other than emergencies.* For many years the Committee has been drawing the Government's attention to the fact that Act No. 24-60 of 11 May 1960 is not in conformity with the Convention in that it allows the requisitioning of persons to perform community work in instances other than the emergencies provided for under *Article 2(2)(d)* of the Convention, and provides that persons requisitioned who refuse to work are liable to imprisonment ranging from one month to one year.

The Committee again notes the Government's indication that this Act has fallen into disuse and may be considered as repealed, in view of the fact that the Labour Code (section 4) and the Constitution (article 26), which prohibit forced labour, annul all the provisions of national law which are contrary to them. The Government explains that, in order to avoid any legal ambiguity, a text will be adopted enabling a clear distinction to be made between work of public interest and the forced labour prohibited by the Labour Code and the Constitution. The Government also indicates that the practice of mobilizing sections of the population for community work, on the basis of the provisions of section 35 of the statutes of the Congolese Labour Party (PCT), no longer exists. Tasks such as weeding and clean-up work are carried out by associations, state employees and local communities on a voluntary basis, therefore without any compulsion involved. Moreover, the voluntary nature of work for the community will be established in the revision of the Labour Code in such a way as to clearly bring the national legislation into conformity with the provisions of the Convention. ***The Committee notes this information and hopes that appropriate measures will be taken to clarify the situation in both law and practice, especially by the adoption of a text enabling a distinction to be made between work in the public interest and forced labour.***

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

## Dominica

### Forced Labour Convention, 1930 (No. 29) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Articles 1(1) and 2(1), (2)(a) and (d) of the Convention. National service obligations.* Over a number of years, the Committee has been requesting the Government to repeal or amend the National Service Act, 1977, under which persons between the ages of 18 and 21 years are required to perform service with the national service, including participation in development and self-help projects concerning housing, school, construction, agriculture and road building, failure to do so being punishable with a fine and imprisonment (section 35(2)). The Committee observed that, contrary to the Government's repeated statement that the national service was created to respond to national disasters, the Act contained no reference to natural disasters, but specified the objectives of the national service, which "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Committee pointed out that the above provisions are not in conformity with the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development".

The Government indicates in its report that the item concerning the amendment of the legislation has been included in the Decent Work Agenda, and that the necessary measures will be taken to address the requests in relation to compliance with the Conventions with the technical assistance of the ILO. ***While having noted the Government's indications in its earlier reports that the National Service Act, 1977, has been omitted from the Revised Laws of Dominica, 1990, and that section 35(2) of the Act has not been applied in practice, the Committee trusts that appropriate measures will be taken in the near future in order to formally repeal the above Act, so as to bring national legislation into conformity with Conventions Nos 29 and 105 and that the Government will provide, in its next report, information on the progress made in this regard.***

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

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

## Eritrea

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2000)

*Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee noted that several provisions of Press Proclamation No. 90/1996 establish restrictions on printing and publishing (concerning the printing or reprinting of an Eritrean newspaper or publication without a permit; printing or disseminating a foreign newspaper or publication prohibited from entering Eritrea; publishing inaccurate news or information disturbing public order (section 15(3), (4) and (10))), which are punishable with penalties of imprisonment. Under the terms of section 110 of the Transitional Penal Code of 1991, persons convicted to imprisonment are subject to the

obligation to work in prison. The Government indicated that expressing a political opinion or belief did not constitute a crime in Eritrea and that since independence, no citizen had been detained for expressing his or her opinion or for criticizing the Government. With regard to religious freedom, the Government referred to Proclamation No. 73/1995 respecting religious institutions and activities and indicated that no interference was allowed in the exercise of the rights of any religion or creed on condition that they are not used for political purposes and are not prejudicial to public order or morality. In this regard, the Committee noted that the United Nations Human Rights Council, in its resolution on the situation of human rights in Eritrea of June 2017, expressed its "deep concern at the severe restrictions on the right to freedom to hold opinions without interference, freedom of expression, including the freedom to seek, receive and impart information, liberty of movement, freedom of thought, conscience and religion, and freedom of peaceful assembly and association, and at the detention of journalists, human rights defenders, political actors, religious leaders and practitioners in Eritrea" (A/HRC/RES/35/35).

It also noted that in the context of the Working Group on the Universal Periodic Review, the Government accepted the recommendations of certain countries encouraging it to "reform legislation in the area of the right to freedom of conscience and religion"; ensure that "the rights of all its people to freedom of expression, religion, and peaceful assembly are respected"; and take the "necessary measures to ensure respect for human rights, including the rights of women, political rights, the rights of persons in detention and the right of freedom of expression as it pertains to the press and other media" (A/HRC/26/13/Add.1). The Committee hoped that the Government would take all the necessary measures to ensure that the legislation currently in force, as well as any legislation concerning the exercise of the rights and freedoms under preparation, did not contain any provision which could be used to punish the expression of political opinions or views ideologically opposed to the established political, social or economic system, or the practice of a religion, through the imposition of a sentence of imprisonment under which labour could be imposed.

The Committee notes that the Government, in its report, reiterates its statement that no citizens were arbitrarily arrested for expressing their political opinion or belief nor did any courts impose prison sentences for expressing one's views or for criticizing the Government. In this regard, the Committee notes that the Human Rights Committee, in its concluding observations under the International Covenant on Civil and Political Rights of May 2019, expressed its concern about reports of ongoing arrest and detention of persons for merely expressing their opinion, including political figures, journalists and religious and community leaders (CCPR/C/ERI/CO/1, para, 39). Moreover, the United Nations Special Rapporteur, in her statement of October 2020 on the situation of human rights in Eritrea, referred to numerous cases of arrests and prolonged imprisonment of journalists and writers for being critical of the Government, as well as individuals and religious communities because of their faith and belief. She stated that Eritrea continues to severely restrict civil liberties and that independent human rights defenders, journalists and political opposition groups cannot work freely in the country. The Committee further notes the Government's indication that a new civil and penal code and other related codes with their procedural laws have been concluded and will be enacted shortly.

The Committee recalls that the Convention protects persons who hold or express political views or views ideologically opposed to the established political, social or economic system by prohibiting the imposition of penalties which may involve compulsory labour, including sentences of imprisonment including compulsory labour. Freedom of opinion, belief and expression are exercised through various rights, such as the right of assembly and association and freedom of the press. The exercise of these rights enables citizens to secure the dissemination and acceptance of their views, or to practice their religion. While recognizing that certain limitations may be imposed on these rights as a safeguard for public order to protect society, such limitations must be strictly within the framework of the law. ***In light of these considerations, the Committee urges the Government to take the necessary measures, both in law and in practice, to ensure that no penalties involving compulsory labour are imposed for the peaceful expression of views ideologically opposed to the established political, social or economic system or the practice of a religion, for example by clearly restricting the scope of the provisions under Press Proclamation No. 90/1996 and Proclamation No. 73/1995 to situations connected with the use of violence, or by repealing penalties involving compulsory prison labour. The Committee requests the Government to provide information on any progress made in this regard, as well as information on the application in practice of the provisions of the above Proclamations, with an indication of the acts which gave rise to conviction and the type of penalties imposed.***

*Article 1(b). Compulsory national service for purposes of economic development.* In its previous comments, the Committee referred to its observation concerning the Forced Labour Convention, 1930 (No. 29), in relation to the broad range of types of work exacted from the population as a whole in the context of compulsory national service, as set out in the Proclamation on National Service No. 82 of 1995 and the 2002 Declaration on the "Warsai Yakaalo" Development Campaign. The Committee recalled that this national service obligation, to which all citizens between the ages of 18 and 40 years are subject for an indeterminate period of time, has the objectives of the reconstruction of the country, action to combat

poverty and the reinforcement of the national economy and, consequently, is clearly in contradiction with the objective of this Convention which, in *Article 1(b)*, prohibits recourse to compulsory labour "as a method of mobilizing and using labour for purposes of economic development". It therefore strongly urged the Government to take the necessary measures without delay for the elimination in law and practice of any possibility of using compulsory labour in the context of national service as a method of mobilizing labour for the purposes of economic development.

The Committee notes that the Conference Committee for the Application of Standards concerning the application of the Forced Labour Convention, 1930 (No. 29), in its conclusions adopted in June 2018, noted the Government's statement that the "Warsai Yakaalo" Development Campaign was no longer in force, and that a number of conscripts had been demobilized and were under the civil service with an adequate salary. The Committee also notes that the Conference Committee urged the Government to amend or revoke the Proclamation on National Service, bring an end to forced labour, ensure the cessation of the use of conscripts for the exaction of forced labour in line with the Convention, and avail itself without delay of ILO technical assistance.

Referring to the ILO Technical Advisory mission report of July 2018, the Committee notes a consensus prevailing among the various interlocutors the mission met with that it was important to understand the context of the national service with respect to any engagement with Eritrea. This context included the fact that the obligation of every citizen to undertake national service had to be seen in the light of the situation of "no war, no peace" which had been devastating for the country, and that national service had been part of the Eritrean national struggle for liberation even though national service of an indefinite duration had never been on the Government's agenda. While recognizing that many Eritreans were willing to be part of the national service, which was not intended to be "indefinite", and that national service was essential not only to ensuring the development of the country but also to ensuring its very existence, the Committee notes that the mission was of the view that national service could not be considered as a case of "force majeure", and that the exceptions set out by the Convention No. 29 could not apply to forced labour exacted for economic development purposes for an indefinite period of time. Moreover, a range of stakeholders indicated to the mission that in light of the recent peace treaty between Eritrea and Ethiopia, the compulsory nature of the national service would no longer be justified and demobilization was expected to happen, even though no precise date has been specified.

The Committee notes the Government's statement in its report that Eritrea is in the process of implementing fundamental nation-building principles, and attaches great importance to such principles, which entail creating and expanding national wealth through knowledge-based well-organized productive work, and ensuring equitable distribution of resources and opportunities. If some major tasks such as water supply for all, revival of transport and communication infrastructure, green power generation and electricity supply, housing projects, modern health and education infrastructure are properly implemented, this could lead to wider chances of job creation and employment opportunities for people. It recognizes that the proven commitment, full participation of the people and their relentless toil and resilience is necessary to transform the old traditional subsistence economy to a developed industrial economy and to bring sustainable change to the quality of life of the people. In this respect, people are called upon to carry out economic reconstruction activities, such as reforestation, soil and water conservation and food securing programmes. The Government reiterates that no forced or compulsory labour is used and that the practice of exaction of various kinds of labour from the population is only limited in scope so as to be compatible with the Convention.

In addition, the Committee notes that, in its concluding observations of May 2019, the Human Rights Committee expressed concern about allegations that national service conscripts are deployed for labour in various posts including mining and construction plants owned by private companies, while receiving very little or no salary (CCPR/C/ERI/CO/1, paragraph 37).

The Committee recalls that the prohibition laid down in *Article 1(b)* of this Convention applies even where recourse to forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development is of temporary or exceptional nature. The Committee further emphasizes that no exceptions to universally recognized human rights should be sought in the name of development (paragraph 308 of the 2012 General Survey on fundamental Conventions). ***The Committee therefore urges the Government to take the necessary measures, without delay, to eliminate both in law and practice, the use of compulsory labour in the context of national service as a method of mobilizing labour for the purposes of economic development. In this respect, noting the Government's indication to the members of the technical advisory mission of its willingness to avail itself of ILO technical assistance, the Committee strongly encourages the Government to collaborate with the ILO by continuing to avail itself of ILO technical assistance in its efforts to bring its law and practice into compliance with the provisions of the Convention. The Committee requests the Government to provide information on the measures taken as well as on any progress made in this regard.***

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

## Kazakhstan

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2001)

The Committee notes the supplementary information provided by the Government on matters raised in its previous direct request, and otherwise repeats the content of its observation adopted in 2019 which read as follows.

The Committee previously noted that according to the Criminal Code of 3 July 2014, persons convicted for penal offences with penalties of correctional work or community service are under the obligation to perform labour (sections 42 and 43 of the Criminal Code). The Committee notes that the penalties of restriction of freedom and deprivation of liberty (provided for under sections 44 and 46 of the Criminal Code, respectively) also involve compulsory labour, under the conditions set out in the Executive Penal Code of 5 July 2014 (sections 63(2) and 104(2)(1)).

*Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system*. *Criminal Code*. In its previous comments, the Committee noted a number of provisions of the Criminal Code, under the terms of which certain activities might be punished by sentences involving an obligation to perform labour in circumstances which are covered by the Convention. The provisions in question are as follows:

- section 174, which provides for penalties of restriction of freedom or deprivation of liberty for the incitement of social, national, gender-based, racial, class or religious discord;
- section 400, which establishes penalties such as a fine, correctional work, community work or remand in custody in case of violation of the procedure for organizing and holding meetings, rallies, pickets, street marches and demonstrations;
- section 404, which establishes penalties such as a fine, correctional work, restriction of freedom, deprivation of liberty, with forfeiture of the right to hold certain posts or to engage in certain activities in case of forming, leading and participation in activities of illegal social and other associations.

The Committee noted the Government's indication that, in 2015, there were 47 offences under section 174 of the Criminal Code, out of which three cases were submitted to court, and 44 cases were discontinued. The Committee requested the Government to ensure in practice that the provisions of sections 174, 400 and 404 of the Criminal Code were applied in a manner so as to ensure that no penalties involving compulsory labour were imposed as a punishment for holding or expressing political or ideological views.

The Government indicates in its report that, according to the Supreme Court of Kazakhstan, in the first half of 2019, 19 people were convicted under section 174 of the Criminal Code, including six who were sentenced to imprisonment and ten to restriction of freedom. The Government states that no cases were prosecuted under sections 400 and 404. The Committee notes the information in the compilation report prepared by the United Nations Office of the High Commissioner for Human Rights, for the Universal Periodic Review of November 2019, that the Special Rapporteur on terrorism observed that section 174 of the Criminal Code was the most commonly used against civil society activists, particularly against religious organizations (A/HRC/WG.6/34/KAZ/2, paragraph 25). The Committee also notes that, according to the 2017 Report "Defamation and Insult Laws in the OSCE Region: A Comparative Study" of the Organization for Security and Co-operation in Europe (OSCE), section 174 of the Criminal Code has been increasingly widely used against critical activists, including atheist writers (page 29). Moreover, section 174 of the Criminal Code has been applied in cases concerning criticism of policies pursued by the president of a foreign state (page 132).

Referring to its General Survey on the fundamental Conventions, 2012, paragraphs 302 and 303, the Committee points out that the range of activities which must be protected from punishment involving compulsory labour, under *Article 1(a)*, comprises the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and which may also be affected by measures of political coercion. It also emphasizes that the Convention does not prohibit the application of penalties involving compulsory labour to persons who use violence, incite violence or prepare acts of violence. ***The Committee therefore requests the Government to take the necessary measures to ensure that no penalties involving compulsory labour, including compulsory prison labour, correctional work or community service, are imposed in law and in practice, on persons who peacefully express views ideologically opposed to the established political, social or economic system, for example by clearly restricting the scope of sections 174, 400 and 404 of the Criminal Code to situations connected with the use of violence, or by suppressing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this regard, as well as information on the application in practice of the sections referred to above, specifying the number of prosecutions made under each provision, the grounds for prosecution, and the type of penalties imposed***.

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

## Lebanon

### Forced Labour Convention, 1930 (No. 29) (ratification: 1977)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2018 and requests the Government to provide its comments in this respect.

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant domestic workers to conditions of forced labour.* In its earlier comments, the Committee noted the observation of 2013 from the International Trade Union Confederation (ITUC), indicating that there are an estimated 200,000 migrant domestic workers employed in Lebanon. These workers are excluded from the protection of the Labour Law, have a legal status tied to a particular employer under the *kafala* (sponsorship) system, and legal redress is inaccessible to them. Moreover, they are subjected to various situations of exploitation, including delayed payment of wages, verbal, and sexual abuse. The Committee also requested the Government to take the necessary measures to ensure that the Bill regulating the working conditions of domestic workers, as well as the Standard Unified Contract (SUC) regulating their work are adopted in the very near future.

The Committee notes the Government's indication in its report that, the Bill regulating the working conditions of domestic workers was drafted in conformity with Domestic Workers Convention, 2011 (No. 189), and the Bill has been submitted to the Council of Ministers for discussion. The Bill will provide a certain number of safeguards, including social security coverage; decent accommodation; the timely payment of wages through bank transfer; hours of work (eight hours per day); sick leave; and a day of rest. The Government also indicates that a Steering Committee has been established under the Ministry of Labour in order to deal with issues related to migrant domestic workers and is composed of relevant Ministerial Departments, representatives of the private recruitment agencies, NGOs, certain international organizations, as well as representatives of certain embassies. A representative from the ILO Decent Work Technical Support Team in Beirut is also participating in the Steering Committee.

Moreover, the Government indicates that the Ministry of Interior and the Ministry of Labour have taken a series of preventive measures, including awareness raising campaigns through the media; the establishment of a shelter "Beit al Aman" for migrant domestic workers who are facing difficulties in collaboration with Caritas; the appointment of social assistants who look into the working conditions of migrant domestic workers in their workplaces; the training of labour inspectors on decent working conditions; and the conclusion of a series of Memoranda of Understanding (MOUs) with sending countries, such as the Philippines, Ethiopia and Sri Lanka. The Government further states that the Ministry of Labour has set up a specialized office for complaints and a hotline to provide legal assistance to migrant domestic workers. Moreover, under the Recruitment Agencies of Migrant Domestic Workers Decree No. 1/168 of 2015, it is prohibited to impose recruitment fees on all workers.

The Committee further notes that in its 2015 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) welcomed the various measures adopted by the State party to protect the rights of women migrant domestic workers, including issuing unified contracts, requiring employers to sign up to an insurance policy, regulating employment agencies, adopting a law criminalizing trafficking in persons and integrating such workers into the social charter and the national strategy for social development. The CEDAW, however, expressed concern that the measures have proved insufficient to ensure respect for the human rights of those workers. The CEDAW is equally concerned about the rejection by the Ministry of Labour of the application by the National Federation of Labour Unions to establish a domestic workers' union, the absence of an enforcement mechanism for the work contracts of women migrant domestic workers, limited access for those workers to health care and social protection and the non-ratification of the Domestic Workers Convention, 2011 (No. 189). The CEDAW was further concerned about the high incidence of abuse against women migrant domestic workers and the persistence of practices, such as the confiscation of passports by employers and the maintenance of the *kafala* system, which place workers at risk of exploitation and make it difficult for them to leave abusive employers. The CEDAW was deeply concerned about the disturbing documented reports of migrant domestic workers dying from unnatural causes, including suicides and falls from tall buildings, and about the failure of the State party to conduct investigations into those deaths (CEDAW/C/LBN/CO/4-5, paragraph 37).

While taking note of the measures taken by the Government, the Committee notes with ***concern*** that migrant domestic workers are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical abuse. Such practices might cause their employment to be transformed into situations that amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to provide migrant domestic workers with an adequate legal protection, by ensuring that the Bill regulating the working conditions of domestic workers will be adopted in the very near future and to provide a copy of the legislation, once adopted. The Committee also urges the Government to take the necessary measures to ensure that migrant domestic workers are fully protected from abusive practices and working conditions that amount to forced labour.***

*Article 25. Penal sanctions for the exaction of forced labour.* In its earlier comments, the Committee noted that according to the ITUC's information, it was found that a lack of accessible complaint mechanisms, lengthy judicial procedures, and restrictive visa policies dissuade many workers from filing or pursuing complaints against their employers. Even when workers file complaints, the police and judicial authorities regularly fail to treat certain abuses against domestic workers as crimes. The Committee also noted the Government's indication that section 569 of the Penal Code, which establishes penal sanctions against any individual who deprives another of their personal freedom, applies to the exaction of forced labour. It requested the Government to provide information on any legal proceedings which had been instituted on the basis of section 569 as applied to forced labour and on the penalties imposed.

The Committee further notes that in its 2015 concluding observations, the CEDAW observed that migrant domestic workers face obstacles with regard to their access to justice, including fear of expulsion and insecurity of residence.

The Committee notes the Government's indication that the work of migrant domestic workers is regulated by the SUC and that the application of section 569 of the Penal Code is of the competency of the judiciary when a violation is detected. The Committee also notes copies of court decisions provided by the Government. It observes that the cases are related to non-payment of wages, harassment and working conditions of migrant domestic workers. In all cases employers have been sentenced to pay a monetary penalty to compensate the workers.

While noting this information, the Committee recalls that *Article 25* of the Convention provides that the exaction of forced labour shall be punishable as a penal offence. ***The Committee therefore urges the Government to take the necessary measures to ensure that employers who engage migrant domestic workers in situations amounting to forced labour are subject to really adequate and strictly enforced penalties. It requests the Government to provide information on measures taken in this regard.***

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

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

## Madagascar

### **Abolition of Forced Labour Convention, 1957 (No. 105)** (ratification: 2007)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 1(b) of the Convention. Imposition of forced labour as a method of mobilizing and using labour for the purposes of economic development.* In its previous comments, the Committee emphasized that national service, as established in Ordinance No. 78-002 of 16 February 1978 setting forth the general principles of national service, is incompatible with *Article 1(b)* of the Convention. Under the terms of section 2 of the Ordinance, all Malagasies are bound by the duty of national service defined as compulsory participation in national defence and in the economic and social development of the country. This compulsory service, which requires citizens to be engaged in defence or development work, involves citizens of both sexes for a maximum period of two years and may be carried out up to the age of 35. The Committee requested the Government to take the necessary measures to bring its legislation into conformity with the Convention.

The Committee notes the Government's indication that, after the processes of registration and review, young national service conscripts have to carry out their service by choosing between two options: (i) being excused for family reasons, in which case conscription is cancelled or deferred for one year, depending on the circumstances; or (ii) continuing vocational training through Action for Development Military Service (SMAD). The objective of the SMAD is therefore to facilitate the integration into active life of young Malagasies who volunteer for national service. The SMAD is established on a voluntary basis for young persons, and the duration of the training is set at 24 months, following which the volunteers are released from their statutory service obligations. These young persons choose between training for rural or urban trades.

The Committee once again recalls that programmes involving the compulsory participation of young persons in the context of military service or, instead of such service, in work for the development of their country, are incompatible with *Article 1(b)* of the Convention, which prohibits the use of compulsory national service as a method of mobilizing labour for the purposes of economic development. It observes that the Ordinance of 1978 provides that all Malagasies are covered by the duty of national service, defined as compulsory participation in national defence and in the economic and social development of the country. ***The Committee firmly requests the Government to take the necessary measures to bring Ordinance No. 78-002 of 16 February 1978 into conformity with the Convention by guaranteeing that compulsory national service is not used as a method of mobilizing labour for the purposes of economic development. In the meantime, the Committee requests the Government to specify the relationship between the service obligations envisaged in the framework of compulsory national service, as set out in the Ordinance of 1978, and participation in SMAD. The Committee further requests the Government to indicate the practical modalities for the implementation of the SMAD and whether young persons who have chosen the SMAD can cancel the training on their own initiative. Finally, the Committee requests the Government to indicate the number of cancellations registered and their consequences.***

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

## Mali

### **Forced Labour Convention, 1930 (No. 29)** (ratification: 1960) and **Protocol of 2014** (ratification: 2016)

The Committee welcomes the ratification by Mali of the Protocol of 2014 to the Forced Labour Convention, 1930. It notes the Government's report on the Convention and the first report on the Protocol.

#### Slavery-like practices and hereditary servitude

*Articles 1(1) and 2(1) of the Convention, and Article 1(2) of the Protocol. Systematic and coordinated action.* In its previous comments, the Committee expressed the hope that the Government would be able to report the action taken to examine the issue of the persistence of slavery and to take the necessary

measures to bring an end to any practice under which persons considered to be descendants of slaves are forced to perform work without giving their valid consent.

The Committee notes the Government's indication that the insecurity in the North of the country makes it difficult to take any initiative for the examination of the situation in question. However, action is being taken to examine the issue of the persistence of slavery and the measures necessary to bring it to an end. The Committee notes that, in his 2020 report, the United Nations Independent Expert on the situation of human rights in Mali indicates that he has been informed of several cases involving physical violence, threats and banishment of victims of slavery, including the arbitrary arrest and detention of 16 anti-slavery human rights defenders (A/HRC/43/76, paragraph 29). The Committee also notes that a new project has been initiated to combat slavery and discrimination on the basis of slavery, which was developed by the Government and the ILO and its partners. The Committee notes with ***concern*** the persistence of slavery-like practices in the country and the lack of systematic and coordinated action to bring it to an end. ***The Committee requests the Government to take the necessary measures, including within the framework of the project developed with the ILO, to assess the extent of the phenomenon of slavery and similar practices and to develop a strategy for the implementation of systematic and coordinated action to bring an end to these practices.***

*Article 25 of the Convention and Article 1(3) of the Protocol. Imposition of penalties.* The Committee notes the lack of judicial action and penalties in cases related to slavery. The Committee notes that, under the terms of section 29 of the Penal Code, slavery is defined as a crime against humanity and is punishable by the death penalty. Moreover, section 243 of the Penal Code provides that debt bondage and slavery shall be punishable by a sentence of imprisonment of from six months to two years and a find of between CFA 20,000 and 100,000. ***The Committee therefore requests the Government to take the necessary measures to ensure that prosecutions are undertaken in cases of slavery, and to provide information in this regard and on the penalties imposed. It also requests the Government to take measures to reinforce awareness-raising activities and training for actors involved in the criminal justice system in relation to the suppression of slavery-like practices.***

*Articles 2 and 3 of the Protocol. Awareness-raising measures. Identification and protection of victims.* The Committee notes the lack of information on measures for the prevention of slavery and for the identification and protection of the victims of slavery. ***The Committee requests the Government to provide information on the measures adopted to raise awareness of the issue of the persistence of slavery-like practices, and to identify and protect the victims. It also requests the Government to provide information on the number of victims identified, those that have benefited from protection and the nature of the protection provided.***

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

## Mauritania

### **Forced Labour Convention, 1930 (No. 29)** (ratification: 1961) and **Protocol of 2014** (ratification: 2016)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC), the General Confederation of Workers of Mauritania (CGTM) and the Free Confederation of Mauritanian Workers (CLTM), received on 1 September, 30 August and 12 June 2019, respectively. It also notes the observations of the ITUC and the CGTM received in 2018. Lastly, the Committee notes the Government's reply to the 2019 observations of the CLTM and the CGTM, received on 21 October 2019.

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

*Articles 1(1), 2(1) and 25 of the Convention. Slavery and the vestiges of slavery.* The Committee previously noted that in June 2017 the Conference Committee expressed its deep concern at the persistence of slavery and the low number of prosecutions brought and it urged the Government to continue its efforts to combat slavery and its vestiges. The Committee welcomed the fact that the Government had accepted a high-level mission and the continuation of the ILO technical cooperation project to strengthen the efforts made by the Government to bring an end to the vestiges of slavery. The Committee requested the Government to take the necessary measures, both in the framework of the technical cooperation project and the inter-ministerial committee responsible for implementing the road map to combat the vestiges of slavery, to implement the recommendations of the Conference Committee and those made by the Committee of Experts.

The Committee notes the report of the high-level mission which visited Mauritania in April 2018. The mission noted certain progress due to the efforts of the Government. While the Government showed the will to continue taking action to combat this divisive phenomenon, the global context in which action was being taken remained complex. The mission heard ambivalent statements and observed that the action taken was subject to different perceptions by the various stakeholders. The mission considered that the continuation of a multisectoral approach was essential to combat all the aspects of slavery and its vestiges, including discrimination. The mission recommended the Government to establish a coordination mechanism and to adopt a plan of action to combat forced labour and slavery articulated around four components: (a) support for the effective application of the Act of 2015 (Act No. 2015-031 of 10 September 2015 criminalizing slavery and punishing slavery-like practices) through the strengthening of the role and presence of the State; (b) the identification, provision of assistance and protection of victims; (c) the promotion of an inclusive approach and a better collective understanding of the action taken; and (d) awareness-raising. The Committee therefore proposes to examine these four components, which were addressed in its previous comments.

*(a) Effective application of the 2015 Act.* The Committee previously emphasized that the efforts made to disseminate knowledge of the 2015 Act and reinforce the training of the various actors in the criminal justice system had not in practice led to the examination of cases by the three special criminal courts with competence for slavery issues. It requested the Government to continue to take action in this respect so as to ensure that no cases of slavery go unpunished. The Committee notes that the mission welcomed the fact that several cases are before the special criminal courts and emphasized the importance of ensuring that these courts benefit from the necessary resources and stability to discharge their functions. It also observed that access to victims and their identification is still complex.

In its 2019 report, the Government refers to a number of measures, including: the circular issued by the Public Prosecutor urging all prosecutors to investigate cases of slavery more actively; free legal assistance and exemption from legal fees for victims of slavery at all stages of the procedure; the creation of legal aid offices; and the possibility available to the judges to order interim measures to protect the rights of victims. The Government adds that 35 cases have been referred to the three special criminal courts and have resulted in conciliation, the dismissal of cases, acquittals, convictions and civil damages. The East court has handed down two judgments and is due to examine around ten cases involving matters prior to the entry into force of the 2015 Act. The court in Nouakchott has dealt with ten cases since 2010 and appeals have been lodged in six others which were examined by courts of first instance. The court of Nouadhibou has dealt with seven cases (only one case is under investigation, two have been closed and three are awaiting referral by the regional criminal court). The Government also indicates that the Department of Justice is continuing to organize seminars for judicial stakeholders involved in action to combat slavery. In 2018 and 2019, training and awareness-raising workshops were organized in Nouadhibou, Kiffa, Nouakchott and Aleg for members of the special criminal courts and magistrates of appeal bodies, investigating magistrates, prosecutors and members of the police and gendarmerie. In the supplementary information provided in 2020, the Government specifies that the criminal courts tried 11 cases related to slavery on the basis of the 2015 Act. Nine cases concerned traditional slavery, while the two others concerned slavery-based insults. Two acquittals were given, and prison sentences of one to 20 years and substantial fines imposed.

The Committee notes that, in the context of the technical cooperation project of the ILO, an evaluation is being prepared of the operation of the three special criminal courts, with the support of the Ministry of Justice. The objective is to be able to make recommendations for specific improvements that can be made with a view to the more effective enforcement of the 2015 Act.

The Committee notes that, in its observations, the ITUC reports several obstacles to the effective enforcement of the law: the lack of action by police officers and prosecutors when cases of slavery are reported; acts of intimidation by the police and the judicial authorities in relation to victims to persuade them to accept an amicable settlement with their former “master”; and the absence of protection measures for victims and witnesses.

The Committee notes all of these elements. It recalls that, under the terms of *Article 25* of the Convention, member States are required to ensure that the penalties imposed by law for the exaction of forced labour are really adequate and are strictly enforced. In this regard, it welcomes the fact that the three special criminal courts have before them an increasing number of cases of slavery. However, it observes that the information concerning these cases is still imprecise and that, four years after the adoption of the 2015 Act, a limited number of cases appear to have resulted in the imposition of really adequate penalties. ***The Committee urges the Government to continue to take the necessary measures to strengthen knowledge of the Act of 2015 by both the public authorities and the victims and to ensure its effective application. Therefore, as indicated by the mission in its report, the Committee encourages the Government to pursue the training activities for the various actors in the enforcement system. It also emphasizes the importance of the preparation of a practical guide listing the most common elements/indicators that suggest that a person is in a situation of slavery as a means of reinforcing***

***capacities for the identification of cases of slavery, the collection of evidence and the assessment of the facts. The Committee also hopes that the Government will take the necessary measures to ensure that the evaluation is undertaken of the operation of the three special criminal courts and requests it to specify the recommendation made in this context. It requests the Government to continue providing information on the number of cases of slavery reported to the authorities, the number of cases that have led to judicial action, the number of the convictions handed down, the nature of the sanctions imposed, as well as the number of cases that were settled outside the judicial system. The Committee also requests the Government to indicate the number of victims of slavery who have been compensated for the damages suffered, in accordance with section 25 of the 2015 Act.***

*(b) Identification, protection and reintegration of victims.* The Committee previously noted that the identification and provision of effective assistance to victims of slavery still remained a challenge to be overcome in practice. The mission considered that it was essential to establish structures to receive victims and provide them with comprehensive assistance so that they can be provided with support in asserting their rights and reconstructing their lives free of any pressure.

The Committee notes that the Government has not provided any information on the specific assistance provided to victims, despite the existence of a number of cases that are before the courts. It notes that, among general social integration measures, the Government refers to: the activities undertaken by the Tadamoun Agency (the National Agency to combat the vestiges of slavery); the measures taken to facilitate access to civil status of persons without filiation through 17,857 declaratory judgements respecting civil status, particularly to issue birth certificates; action to encourage families to register with schools the children of poor families and/or victims of the vestiges of slavery, within the framework of cash transfer measures; training courses, skills and employment programmes and income generation projects established for populations who are victims of the vestiges of slavery; and the reform of property ownership undertaken through the pluridisciplinary commission to reform the law on property and public land. In its supplementary information, the Government refers to the launching, in January 2020, of the special "Ewlewiyatt" (Priorities) programme, which covers the largest number of simultaneous projects ever in the country, and also to the programmes developed by the General Office for National Solidarity and the Combat against Exclusion (TAAZOUR), aimed at supporting the most disadvantaged populations.

The Committee notes that, in its observations, the CGTM indicates that the actions undertaken by the Tadamoun Agency have only focused on the development of social and school infrastructure, without addressing the issues of prevention and the protection of victims, The CGTM observes that victims are not associated in the design or implementation of the programmes that concern them. The CLTM also refers to the absence of reception structures. The ITUC emphasizes that people who are freed from slavery do not have access to specific rehabilitation and integration measures. Faced with poverty, they are at risk of falling back into a situation of exploitation due to the lack of alternatives, or of returning to their former "masters" by reason of the psychological hold exerted in the context of slavery.

***While welcoming the general measures to combat poverty and promote social integration taken by the Government, the Committee hopes that the Government will provide information on the specific measures taken so that the victims who are identified benefit from specific support adapted to their situation, enabling them to assert their rights and rebuild their lives psychologically, economically and socially. As noted by the mission, the Committee draws the Government's attention to the need to pay special attention to the situation of women and their children and to the possibility of envisaging the creation of a public fund for the compensation of victims. The Committee once again requests the Government to indicate the number of cases in which the Tadamoun Agency has been a party to civil proceedings, and the number of victims who have been supported by the Agency during the investigations and judicial proceedings, with an indication of the nature of the assistance provided.***

*(c) An inclusive approach, coordination and a better collective understanding of the phenomenon.* 1. *Plan of action.* The Committee previously welcomed the multisectoral approach and the interministerial coordination introduced for the implementation of the road map to combat the vestiges of slavery. It requested the Government to indicate the new actions identified following the final evaluation of the impact of the measures adopted within the framework of the road map. The Government indicates that the final evaluation seminar on the implementation of the road map found that the 29 recommendations set out in the road map have been globally implemented in a satisfactory manner. The Committee notes that, in its observations, the CGTM observes that workers' organizations were not associated with the formulation, implementation or evaluation of the road map. It adds that the absence of dialogue concerning the action to be taken for the elimination of all forms of forced labour is liable to compromise the Government's programmes and the efforts made to combat slavery and its vestiges. The ITUC recalls in this regard the importance of the inclusion of workers' organizations at every stage of the preparation and implementation of a plan of action.

The Committee notes the adoption of Order No. 085 of 5 February 2019 appointing the President and the members of the National Social Dialogue Council. The Committee notes that the priority issues to be

covered by the National Social Dialogue Council include the development and finalization as soon as possible of a plan of action to combat forced labour and child labour with a view to the continuation of the action to be taken on the basis of the conclusions set out in the report of the ILO mission and the recommendations of the Committee on the Application of Standards. ***The Committee trusts that the Government will take the necessary measures to adopt without delay the plan of action to combat forced labour prepared by the National Social Dialogue Council and to ensure that it will cover all of the components examined by the Committee and the mission in its report, with a view to taking effective action to combat the multiple aspects of slavery. Recalling that action to combat slavery requires the commitment of all actors within the framework of coordinated action carried out at the highest level, the Committee also requests the Government to indicate the measures adopted to establish a coordination and follow-up mechanism for the implementation of the plan of action, and to ensure the involvement of all stakeholders, including workers' and employers' organizations.***

2. *Qualitative study.* With regard to the qualitative study that is due to be undertaken within the framework of the technical cooperation project of the ILO, the Committee emphasized the importance of taking into account the issue of economic, social and psychological dependence when assessing whether a person has expressed free and informed consent to work, free of any threat of pressure. In its report, the mission emphasized that the qualitative study to be carried out would provide all of the actors involved with reliable data to guide their action and that it was essential for the Government to facilitate the process of the preparation of the study as soon as possible.

The Committee notes that, during the course of 2019, within the framework of the technical cooperation project, 12 regional workshops were organized throughout the national territory with a view to the preparation of a research protocol for the qualitative study. The objective was to identify the scope of application of the study, the categories of workers and the employment sectors at risk. The social partners were associated with the workshops. The research protocol could be validated at the beginning of 2020. The Committee notes that the ITUC, in its observations, welcomes the progress in the preparation of the qualitative study and reiterates the importance of also carrying out a study to determine the quantitative incidence of slavery.

The Committee also notes that, in its observations, the CLTM indicates that slavery continues to exist in its most archaic form involving people who remain at the disposal of their masters 24 hours a day. The CGTM refers to the subordinate relationship of former slaves who live in very difficult economic and social conditions due to the discrimination and social exclusion that has marked them and makes them vulnerable to exploitation.

***Recalling the importance of the availability of reliable data on the phenomenon of slavery and the various forms of forced labour, the Committee firmly hopes that the Government will continue to take all the necessary measures so that the qualitative study can be completed as soon as possible, with ILO assistance.***

*(d) Awareness-raising.* The Committee previously noted the awareness-raising actions taken by the Government and requested it to continue to take action, not only to raise awareness of the 2015 Act, but also to delegitimize slavery and combat the stigmatization and discrimination to which victims and their descendants are subjected. The Committee notes in this respect that the mission recommended the establishment of a multi-year intervention plan to coordinate awareness-raising activities over time and throughout the national territory, paying special attention to women, children, mayors and local actors. The Government refers once again to the awareness-raising caravans that are travelling throughout the national territory, and particularly in certain *adwabas* (villages), placing emphasis on the action taken to combat slavery practices. The Government adds that, with a view to reinforcing the legal framework to combat contemporary forms of slavery and any tendency to discriminate against citizens, an important legislation has been adopted to repress any discriminatory practices that may emerge in the country.

The Committee notes that the ITUC, in its observations, continues to refer to the obstacles encountered by certain civil society organizations working in the field of action to combat slavery and its vestiges, and refers to acts of intimidation and the difficulties encountered by certain organizations concerning their registration.

***The Committee requests the Government to continue undertaking awareness-raising activities on the issue of slavery throughout the national territory. The Committee also requests the Government to associate all the stakeholders, including the local authorities, so that the firm will of the State on the issue of action to combat slavery, its vestiges and discrimination is communicated and understood at all levels. The Committee also requests the Government to ensure that persons and organizations that combat slavery can act freely and without fear of reprisals.***

***Noting that the Government has not provided its first report on the application of the Protocol of 2014 to the Forced Labour Convention, 1930, the Committee requests the Government to provide it with its next report on the application of the Convention.***

# Mozambique

## Forced Labour Convention, 1930 (No. 29) (ratification: 2003) and Protocol of 2014 (ratification: 2018)

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* In its previous comments, the Committee noted that the implementing regulations of Act No. 6/2008 of 9 July establishing the legal framework applicable to preventing and combating trafficking in persons, which were intended to establish measures for awareness-raising, training, protection and the reintegration of victims, had not been adopted, but that a study ordered by the Prosecutor-General recommended the adoption of a plan of action in this area. It requested the Government to take the necessary measures to adopt a national plan to combat trafficking in persons with precise and coordinated measures and to describe the measures taken for the protection and reintegration of victims, in accordance with sections 20, 21 and 24 of Act No. 6/2008. The Committee notes the Government's indication, in its report, that on 11 December 2017 a draft national plan to prevent and combat trafficking in persons was presented by the Deputy Minister for Justice in order to improve the protection system through a comprehensive national strategy. The Government adds that the draft national plan includes specific objectives for the prevention of trafficking, protection of victims and sanction of perpetrators. The Committee notes the Government's statement that the national police carried out awareness-raising campaigns at community-level, as well as regular monitoring of places where trafficking in persons may occur, such as restaurants, plantations and mining operations. With regard to victim protection, the Government states that victims of trafficking can benefit from emergency shelters operating under the responsibility of the Ministry of Gender, Child and Social Action, offering appropriate housing, medical and psychological assistance and sometimes vocational training. The Committee notes, from the 2018 annual report of the Prosecutor-General of the Republic submitted to the Assembly of the Republic, that several measures have been taken to raise awareness of trafficking in persons and for the training of state employees, more particularly judges and police officers, as well as to strengthen transnational cooperation with South Africa, Zimbabwe and Eswatini. It notes that the number of victims of trafficking increased from 5 in 2017 to 26 in 2018, of whom 21 were victims of trafficking for labour exploitation. It notes, however, that the Prosecutor-General highlighted the need for concerted and increased efforts to prevent and combat trafficking in persons, as well as the inappropriate legislative framework for sanctioning those perpetrators. The Committee further notes that, in their respective 2019 and 2018 concluding observations, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) and Committee on Migrant Workers (CMW) expressed concern about: (i) Mozambicans and migrant workers, in particular those in an irregular situation, who have been victims of trafficking and forced labour, particularly in the mining, agriculture, construction, tourism and domestic work sectors; (ii) the insufficiency of the human and financial resources allocated to prevent and eradicate trafficking in persons, as well as of the training given to officials responsible for the implementation of anti-trafficking legislation; (iii) the very low number of prosecutions and convictions of cases of trafficking in persons and the complicity within the national police force from which some traffickers benefited; and (iv) the lack of effective procedures for early identification and referral of victims of trafficking, including undocumented migrants, the insufficient number and coverage of shelters for victims of trafficking, and the inadequacy of the medical and psychological assistance provided to them (CEDAW/C/MOZ/CO/3-5, 30 July 2019, paragraph 27 and CMW/C/MOZ/CO/1, 16 October 2018, paragraph 61). ***While noting the measures taken by the Government, the Committee requests it to strengthen its efforts to combat trafficking in persons and to adopt and implement without delay concrete and coordinated measures with a view to: (i) preventing trafficking in persons and raising awareness of the issue; (ii) reinforcing the capacities and training of the authorities responsible for the detection of situations of trafficking, carrying out investigations and initiating prosecutions; and (iii) punishing those responsible, including any complicit public officials. It also requests the Government to provide information on any progress made towards the adoption of the national plan to prevent and combat trafficking in persons and the implementing regulations of Act No. 6/2008, or any difficulties faced in that regard. It further requests the Government to provide information on the specific measures taken for the protection and reintegration of victims, in particular in the framework of sections 20, 21 and 24 of Act No. 6/2008. Lastly, the Committee requests the Government to provide statistical data on the number and nature of investigations carried out, prosecutions initiated, court decisions handed down and penalties imposed under Act No. 6/2008 which establishes penalties of up to 16–20 years of imprisonment.***

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

## Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1977)

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

*Article 1(a) and (b) of the Convention. Compulsory labour for persons identified as "unproductive" or "anti-social".* For many years, the Committee has been drawing the Government's attention to the need to amend

the Ministerial Directive of 15 June 1985 on the evacuation of towns, under which persons identified as "unproductive" or "anti-social" may be arrested and sent to re-education centres or assigned to productive sectors. The Government indicated previously that re-education centres no longer existed and that the 1985 Directive had become obsolete and would be repealed within the framework of the revision of the Penal Code. The Committee observes with ***regret*** that the new Penal Code adopted in December 2014 (Act No. 35/2014) does not repeal this Directive. The Committee recalls that, under the terms of *Article 1(a)* and *(b)* of the Convention, States undertake not to make use of any form of forced or compulsory labour as a means of political coercion or education or as a method of mobilizing and using labour for purposes of economic development. ***The Committee urges the Government to take the necessary measures to formally repeal the Ministerial Directive of 15 June 1985 on the evacuation of towns so as to bring the legislation into conformity with the Convention and with the practice indicated, and thereby ensure legal certainty.***

*Article 1(b) and (c). Imposition of sentences of imprisonment involving an obligation to work for the purposes of economic development and as a means of labour discipline.* For many years, the Committee has been emphasizing the need to amend or repeal certain provisions of Act No. 5/82 of 9 June 1982 concerning the defence of the economy. This Act provides for the punishment of types of conduct which, directly or indirectly, jeopardize economic development, prevent the implementation of the national plan and are detrimental to the material or spiritual well-being of the population. Sections 10, 12, 13 and 14 of the Act prescribe prison sentences, which may involve compulsory labour, for repeated cases of failure to fulfil the economic obligations set forth in instructions, directives, procedures, etc., governing the preparation or implementation of the national State plan. Section 7 of the Act penalizes unintentional conduct (such as negligence, the lack of a sense of responsibility, etc.) resulting in the infringement of managerial or disciplinary standards.

The Committee noted previously that in 2007 the Constitutional Council declared a law adopted by the Assembly of the Republic repealing Act No. 5/82 (as amended by Act No. 9/87) to be unconstitutional, considering that the blanket repeal of these Acts would have the effect of no longer criminalizing or punishing certain conducts that jeopardize economic development that are not punishable by other legislative texts, thereby leaving a legal vacuum. The Committee notes that, although the 2014 Penal Code repeals certain provisions of these two Acts, the sections covered by its previous comments, namely sections 7, 10, 12, 13 and 14, remain in force. ***The Committee regrets that the Government did not take the opportunity of the adoption of the new Penal Code to bring its legislation into conformity with the Convention and it trusts that the Government will not fail to take the necessary measures to repeal the provisions of Act No. 5/82 concerning the defence of the economy, as amended by Act No. 9/87, which are contrary to the Convention.***

*Article 1(d). Penalties imposed for participation in strikes.* In previous comments, the Committee noted that, under section 268(3) of the Labour Act (Act No. 23/2007), striking workers who are in violation of the provisions of section 202(1) and section 209(1) (obligation to ensure a minimum service) face disciplinary penalties and may incur criminal liability, in accordance with the general legislation. The Committee notes that the Government has not provided any information on the nature of the penalties which may be faced by striking workers in cases where their criminal liability is incurred, nor on the provisions of the general legislation that are applicable in this respect. The Committee recalls in this regard that, in accordance with *Article 1(d)* of the Convention, persons who participate peacefully in a strike cannot be liable to imprisonment involving compulsory labour. ***The Committee therefore once again requests the Government to indicate the nature of the penalties that may be imposed on striking workers where their criminal liability is incurred pursuant to the provisions of section 268(3) of the Labour Act. Referring also to its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee requests the Government to take the necessary measures to ensure that no prison sentences involving compulsory labour can be imposed on workers who participate peacefully in a strike.***

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

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



# Myanmar

## Forced Labour Convention, 1930 (No. 29) (ratification: 1955)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019. It also notes the detailed discussion which took place at the 108th Session of the Conference Committee on the Application of Standards in June 2019, concerning the application by Myanmar of the Convention.

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

*Articles 1(1), 2(1) and 25 of the Convention. Elimination of all forms of forced labour.* 1. *Engagement of the ILO regarding the elimination of forced labour. (a) Historical background.* In March 1997, a Commission of Inquiry was established under article 26 of the ILO Constitution to address the forced labour situation in Myanmar. As reported to the ILO Governing Body, forced labour had taken various forms in the country over the years, including forced labour in conflict zones, as well as for public and private undertakings. In its recommendations, the Commission of Inquiry urged the Government to take the necessary steps to ensure that: (i) the relevant legislative texts, in particular the Village Act and the

Towns Act, be brought into line with the Convention; (ii) in practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and (iii) the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

Since then, the issue has been the focus of cooperation between the Government and the ILO for more than a decade. In 2002, an Understanding was agreed between the Government and the ILO, which permitted the appointment of an ILO liaison officer. Later in 2007, the Supplementary Understanding (SU) was signed, in particular, to set out a complaints mechanism with the objective "to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention". In addition, in 2012, the ILO concluded a Memorandum of Understanding (MoU) on a Joint Strategy for the Elimination of Forced Labour by 2015, which provided a basis for seven interrelated action plans. The ILO also participated in the Country Task Force on Monitoring and Reporting on underage recruitment issues.

*(b) Recent developments.* The Action Plan for the elimination of all forms of forced labour, 2018 and the SU, which provided for a complaints mechanism, expired in December 2018. On 21 September 2018, the Government, the workers' and employers' organizations and the ILO signed the MoU on Decent Work Country Programme (DWCP) (2018–21). The significant implementation outputs, as indicated in the DWCP document, include institutionalization of national forced labour complaints mechanisms and strengthened protection against unacceptable forms of work, in particular forced and child labour by 2021. The Committee notes that in the course of the discussion in October–November 2019, the Governing Body noted, in respect of progress in the elimination of the use of forced labour that the number of complaints received had continued to decrease since 2016 suggesting progress towards elimination of underage recruitment, which generally accounted for the highest proportion of complaints received. It noted that in 2019 the ILO received 108 forced labour complaints, 48 of which have been assessed as being within the definition of forced labour while there were no complaints received of forced labour related to the involuntary use of civilians as guides and porters from conflict areas. Very few reports of forced labour in the private sector have been received since March 2019. The Governing Body also noted that the proposal for the establishment of a National Complaints Mechanism (NCM) was approved by the Government by a letter dated 7 August 2019 (GB.337/INS/9). The Governing Body noted that the ILO stressed on the following elements as necessary for a credible and effective complaints mechanism: (a) impartiality in the assessment and investigation of complaints; (b) guaranteed protection of victims; (c) credible accountability; (d) decentralization of responsibility to eliminate forced labour; and (e) awareness-raising programmes, particularly for those living in remote and conflict-affected areas. Although the Government had publicly advertised its intention to establish an NCM, no reference had been made to complainants being able to continue to submit complaints to the ILO. The GB also noted that while the Government had made efforts to develop interim procedures for dealing with complaints, a framework for the development of the NCM and an action plan for the elimination of forced labour under the DWCP, the victim protection measures remained unclear and the decentralization responsibility to state and regional governments to eliminate forced labour still needed to be addressed.

2. *Application of the Convention in law and in practice.* In its previous comments, the Committee noted that the Ward or Village Tract Administration Act of 2012, which repealed the Village Act and the Towns Act of 1907 makes the use of forced labour by any person a criminal offence punishable with imprisonment and fines (section 27A). It noted that no action had been taken to amend article 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which exempts from the prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public" and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. It also noted that the developments within the peace process, such as the National Ceasefire Agreement of 2015 as well as the ILO initiation with the Government and the Ethnic Armed groups which resulted in two non-state armed groups committing to end forced labour, led to a significant decrease in the numbers of reported cases of forced recruitment for military purposes by both the security forces and armed groups. The Committee, however, noted from the Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar of 17 September 2018 (A/HRC/39/CRP.2) that the use of forced labour by the *Tatmadaw* (the armed forces of Myanmar) persisted, particularly in Kachin and Shan States, as well as among the ethnic *Rakhine* and *Rohingya.* It noted that in many instances, the *Tatmadaw* arrived in a village and took villagers directly from their homes or from the areas surrounding their village while they were fishing, farming, running errands or travelling while in some cases, this was done in an organized way, such as house by house, on the basis of a quota for each family, through a list, or with the cooperation of village leaders. Persons subjected to forced labour were required to perform a variety of tasks and the duration varied from a few days to months. Many of them were required to act as porters, carrying heavy packages including food, clothes and in some cases weapons. Other common types of work included digging trenches, cleaning, cooking, collecting firewood, cutting trees, and constructing roads or buildings in military compounds. Victims were also sometimes required to fight or participate in hostilities. Often, victims were given insufficient food of poor quality or were not able to eat

at all. They did not have access to water and were kept in inadequate accommodation, including in the open air without bedding and without adequate sanitary facilities. Victims were subjected to violence if they resisted, worked slowly or rested. Particularly, female victims also faced sexual violence (paragraphs 258–273, 412–424 and 614–615). The Committee noted with deep concern the persistence of forced labour imposed by the *Tatmadaw* in Kachin and Shan States, as well as among the ethnic *Rakhine* and *Rohingya.* It urged the Government to strengthen its efforts to ensure the elimination of forced labour in all its forms, in both law and practice, particularly the forced labour imposed by the *Tatmadaw;* to take the necessary measures to ensure the strict application of the provisions of the Ward or Village Tract Administration Act of 2012 and the Penal Code; as well as to provide information on any progress made regarding the amendment to article 359 of the Constitution.

The Committee notes that, in its observations, the ITUC stated that forced labour is exacted in a systematic and continuous manner and that this practice is also persistent in the private sector, especially in the agricultural sector (fisheries, sugarcane, beans) and in the jade industry. The ITUC further highlights the plight of the *Rohingya* population, nearly 700,000 of them, who were expelled from the *Rakhine* State following the so-called clearance operations, commenced in 2017, and who are at an increased risk of falling victims to forced labour by both state and non-state actors.

The Committee notes the statement made by the Government representative of Myanmar to the Conference Committee that a total of ten ethnic armed forces have already signed the National Ceasefire Agreement and a unilateral ceasefire has been announced in the States of *Kachin* and *Shan* from December 2018 to April 2019. The Government representative further indicated that interim procedures for continuously receiving complaints are in place and that a Joint Parliamentary Committee was established to amend the Constitution. The Worker members, in their statement to the Conference Committee, alleged that the Government failed to implement most of the activities designed under the 2012 and 2018 action plans. The Committee notes that the Conference Committee, in its concluding observations, while welcoming the efforts in eliminating forced labour, expressed concern over the persistent use of forced labour and therefore urged the Government to take all necessary measures to ensure that forced labour is not imposed in practice by the military or civilian authorities; to ensure that victims of forced labour have access to effective remedies and comprehensive victim support without fear of retaliation; to increase the visibility of awareness-building and capacity-building activities for the general public and administrative authorities to deter the use of forced labour; to provide detailed information on the progress made within the DWCP; and to intensify its cooperation with the ILO through the development of a time-bound action plan for the establishment of, and transition to, an effective complaints handling procedure.

The Committee notes the Government's information in its report that within the framework of the DWCP, in January 2019, a Training of Trainers on the Elimination of Forced Labour was conducted with representatives from the High Level Working Group (HLWG), members of the Technical Working Group (TWG) and representatives of the ILO. Moreover, a knowledge-sharing workshop was held during the same period with 50 representatives, including members from the HLWG, TWG, representatives of ILO, Government, and employers' and workers' organizations to share good practices of other countries on developing the National Complaints Mechanism (NCM). The Government indicates that the interim procedures for receiving and resolving forced labour complaints are, and will be, carried out by the HLWG until the establishment of the NCM.

In this regard, the Committee takes due note of the Government's indication in its supplementary information that the NCM has been established and operational since February 2020. A national committee was set up in order to effectively implement the NCM, comprising representatives from 16 ministries and the Myanmar Human Rights Commission, as well as representatives from the Union of the Myanmar Federation of Chambers of Commerce and Industry (UMFCCI), the Confederation of Trade Unions Myanmar (CTUM), the Agriculture and Farmers Federation of Myanmar (Food Allied Workers) (AFFM-IUF) and the Myanmar Industries Craft and Services Trade Unions Federation (MICS-TUsF). An orientation session, facilitated by the ILO, was conducted for the members of the national committee for the NCM. Moreover, training on identifying and investigating forced labour cases, as well as on the international definition of forced labour and international humanitarian law was provided to 38 officials and staff from the various ministries and departments that receive complaints on forced labour. The Committee also notes the Government's information that the NCM resolved 20 cases out of the 38 cases received in 2020, including the 24 cases received during the operation of the interim complaints mechanism.

The Committee also notes the Government's information that from July 2018 to August 2019, a total of 6,423 awareness-raising workshops on forced labour were conducted for an estimated 507,935 people in related townships across the country and 115,113 posters were distributed. Moreover, to prevent the use of forced labour in the private sector, from January 2018 to July 2019, 1,903 knowledge-sharing workshops were conducted with 92,698 participants from 4,252 factories, shops, establishments and training centres.

Regarding the amendment to article 359 of the Constitution which exempts from the prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public", the Committee notes the Government's information that the proposal was brought before the *Pyidaungsu Hluttaw* (Assembly of the Union) on 19 March 2020. However, the Committee notes with ***regret*** the Government's statement that although 409 of the 654 representatives voted in favour of it, the article could not be amended as the required vote of more than 75 per cent of all the representatives of the Assembly was not received.

The Government further indicates that up until July 2020, 1,105 cases concerning underage recruitment were received under the SU complaints mechanism, of which 707 cases have been resolved. The Committee notes that from April 2019 to July 2020, ten military officers and eight military personnel were punished for the irregular recruitment of children. Moreover, 23 underage children who were irregularly recruited were released. The Committee, however, notes an absence of information on the concrete penalties applied to the ten military officers and eight military personnel for the irregular recruitment of children.

It further notes the Government's information that no one was punished under the Ward or Village Tract Administration Act and the Penal Code from July 2018 to July 2019. While taking note of the measures taken by the Government towards the elimination of all forms of forced labour, the Committee once again reminds the Government that, by virtue of *Article 25* of the Convention, the exaction of forced or compulsory labour shall be punishable as a penal offence, and the penalties imposed by law shall be really adequate and strictly enforced.

***The Committee therefore strongly urges the Government to take the necessary measures to ensure the strict application of the national legislation, particularly the provisions of the Ward or Village Tract Administration Act of 2012 and the Penal Code, so that sufficiently dissuasive penalties of imprisonment are imposed and enforced against perpetrators in all cases. In this regard, the Committee requests the Government to provide information on the application in practice of the above-mentioned legislation to ensure accountability, including the statistical data on cases of forced labour detected, legal proceedings initiated, convictions handed down and the nature of the penalties imposed on convicted persons. It also requests the Government to continue providing detailed information on the measures taken to ensure that, in practice, forced labour is no longer imposed by the military or civilian authorities, as well as the private sector, such as awareness-raising and capacity-building activities for local administrators, military personnel, other stakeholders and the general public. The Committee further requests the Government to continue to provide information on the number of complaints on forced labour received and resolved by the NCM. Furthermore, while acknowledging the efforts made by the Government in respect to the proceedings to amend article 359 of the Constitution, the Committee firmly hopes that the Government will continue to take the necessary measures to ensure that article 359 of the Constitution is amended so as to bring it into conformity with the Convention and to provide information on any progress made in this regard. It once again reiterates the firm hope that all the necessary measures will be taken, in law and in practice, without delay to achieve full compliance with the Convention so as to ensure that all use of forced or compulsory labour in Myanmar is completely eliminated.***

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

## Niger

### **Forced Labour Convention, 1930 (No. 29)** (ratification: 1961) and **Protocol of 2014** (ratification: 2015)

The Committee welcomes the ratification by Niger of the Protocol of 2014 to the Forced Labour Convention, 1930, which bears witness to the Government's commitment to prevent and eliminate all forms of forced labour.

*Articles 1(1) and 2(1) of the Convention, and Article 1(1) of the Protocol. Effective measures to combat slavery and similar practices.* 1. *Systematic and coordinated action.* The Committee has been examining the issue of the persistence of slavery-like practices in Niger for many years. The Committee has welcomed the Government's commitment to combating these practices, including with the technical assistance of the Office provided within the framework of the support project to combat forced labour and discrimination (the PACTRAD project). Nevertheless, although noting the existence of a legislative framework that criminalizes slavery, the Committee observed that the institution initially established to coordinate action to combat slavery-like practices, the National Commission to Combat the Vestiges of Forced Labour and Discrimination, lacked the resources to discharge its functions. The Committee considered that the Government should intensify its efforts to bring an end to slavery-like practices and take the necessary measures for the adoption of a national strategy to combat slavery.

In its report, the Government indicates that it has opted for an overall plan to combat trafficking in persons and forced labour by reinforcing the presence of the Ministry of Labour within the National

Commission to Combat Trafficking in Persons (CNLTP) and through the closer involvement of the social partners. It also refers to the activities carried out within the framework of the PACTRAD II project, the general objective of which is to contribute to a significant reduction in the number of victims of forced labour, with the immediate objective of the progressive elimination of the vestiges of slavery. In this context, technical meetings for the exchange of information have been organized so that the various actors have a better knowledge of the priorities and means of intervention used by each of them.

The Committee notes this information. While noting the Government's indication that it has adopted an overall approach to combating trafficking in persons and forced labour within the framework of the National Commission to Combat Trafficking in Persons, the Committee recalls that the issues of trafficking in persons and the vestiges of slavery have their own characteristics and require different specific action. Action to combat trafficking in persons was defined and provided with a framework by Ordinance No. 2010-86 of 16 December 2010 on action to combat trafficking in persons and is covered by a national plan of action implemented by the National Agency for action to combat trafficking in persons and the smuggling of migrants (ANLTP/TIM) (see, in this respect, the Committee's comments in its direct request). The crimes and offences of slavery were introduced into the Penal Code in 2003, without an overall strategy being established to combat these practice. The Committee has previously emphasized the complexity of the factors underlying the persistence of slavery-like practices and the need for a specific response. ***The Committee therefore urges the Government to take the necessary measures for the adoption of a national policy and plan of action to combat slavery and slavery like practices with a view to ensuring the adoption of systematic and coordinated action by the competent authorities and the determination of the objectives to be achieved and the measures to be taken. Please indicate in this regard the manner in which employers' and workers' organizations are consulted. The Committee also requests the Government to indicate the authority that will be competent for the implementation of this policy and to specify the measures taken to ensure that it has the resources to discharge its functions throughout the national territory.***

2. *Article 2 of the Protocol. Prevention. Awareness-raising, education and information (clauses (a) and (b)).* The Committee notes the information provided by the Government on the training and awareness-raising activities organized within the framework of the PACTRAD II project for traditional chiefs, journalists in the public and private press, universities and the National School of Administration, with a view to promoting a change of mentality and behaviour. It notes that, following the theoretical and practical training provided to the Association of Traditional Chiefs of Niger (ACTN), the Association adopted a plan of action to combat forced labour and similar practices. The Committee further notes the Government's indication that, in the context of the Bridge technical cooperation project, it is planned that the ANLTP/TIM will undertake studies on the situation of slavery in locations where vestiges of slavery still persist with a view to the adoption of a strategy to combat slavery.

The Committee recalls that the availability of reliable data on the nature and incidence of slavery-like practices in Niger is an essential prerequisite. ***It strongly encourages the Government to take the necessary measures to undertake, with the assistance of the Office, a study on the situation with regard to slavery and slavery practices to gain a better understanding of the characteristics of such practices, and particularly the multidimensional nature of the relationship that exists between victims and their masters. The Committee requests the Government to continue providing information on the awareness-raising activities carried out for the various competent authorities and actors concerned, as well as the population. Please indicate the manner in which these activities target zones and populations that are at risk.***

*Action to address the root causes of slavery (clause (f)).* The Committee welcomes the various types of action undertaken within the framework of the PACTRAD II project to address the root causes of slavery. It notes in particular the measures taken which led to the creation of community schools (MODECOM) in areas in which communities with slave origins are established, with a view to promoting their emancipation; the organization of a campaign in fairs to draw up birth certificates and identity documents to combat the marginalization of these populations by enabling them to have access to their rights (the right to vote, education and other services); and support services for the independence of households of slave origins in the commune of Tajaé.

***The Committee requests the Government to continue taking measures to address the root causes of the vestiges of slavery-like practices, with an indication of the framework within which the activities are carried out and the manner in which they are coordinated. It requests it to specify whether programmes are specifically targeted at former slaves or the descendants of slaves with a view to ensuring they have sufficient means of subsistence so that they do not fall back into a situation of dependence in which they are vulnerable to the exploitation of their labour. In this regard, the Committee also refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it emphasized the importance of combating the discrimination and stigmatization of which former slaves and the descendants of slaves are victims, including in relation to access to productive resources, such as land, so as to enable them to have a job or engage freely in their activities.***

3. *Article 3 of the Protocol. Identification and protection of victims*. With regard to the identification and protection of victims, the Committee notes that the information provided by the Government mainly concerns the measures adopted or envisaged for the victims of trafficking in persons. It emphasizes in this regard that the victims of slavery are in a situation of economic and psychological dependence which requires specific action by a series of actors in society to detect cases of slavery and help victims to leave their situation of dependence. ***The Committee therefore requests the Government to take the necessary measures to ensure that the victims of slavery are identified and released and that they benefit from protection that is adapted to their situation so that they can rebuild their lives outside the slave-master relationship. The Committee also requests the Government to provide information on the situations that are denounced, the number of potential victims identified, those who have benefited from protection, the nature of such protection and the institutions that have provided such assistance.***

4. *Article 4 of the Protocol. Access to justice and compensation.* The Committee previously noted that the Penal Code empowers any association that has the objective of combating slavery and similar practices to bring civil action for compensation for the damages caused by offences related to slavery (section 270-5). It also noted that vulnerable people who do not have the necessary income can benefit from legal and judicial assistance administered by the National Agency for Legal and Judicial Assistance. The Government indicated that this assistance constitutes significant progress in allowing victims to re-establish their rights. ***The Committee once again requests the Government to indicate the manner in which in practice legal assistance is provided to persons identified as potential victims of slavery. It requests the Government to indicate the manner in which the various actors (civil society associations, the forces of order and the National Agency for Legal and Judicial Assistance) cooperate to ensure that victims are in practice able to assert their rights and have access to justice. The Committee also requests the Government to ensure that victims have easy access to appropriate compensation mechanisms for all the damages that they have suffered.***

5. *Article 25 of the Convention and Article 1(1) of the Protocol. Imposition of effective penal sanctions.* The Committee notes that, since the adoption of the provisions criminalizing slavery in 2003 (Act No. 2003-025 of 13 June 2003, which introduced sections 270-1 to 270-5 on slavery into the Penal Code), very little information has been provided on the prosecutions brought and the sentences handed down against those engaging in slavery. The Government refers to several training activities undertaken between 2013 and 2017 in the defence and security forces within the framework of training modules on human rights, and to awareness-raising activities on trafficking in persons for actors in the criminal justice system. The Committee notes this information and once again emphasizes the need to carry out more targeted activities on the subject of slavery and the related legislative provisions. ***The Committee urges the Government to take the necessary measures to strengthen the capacities of the forces of order, the prosecution services and the judicial authorities to ensure that cases of slavery are identified, evidence collected and prosecutions initiated so that those responsible for such practices are punished under the terms of sections 270-1 to 270-5 of the Penal Code. The Committee requests the Government to provide detailed information on this subject in its next report.***

The Committee notes that a new ILO technical cooperation project (the BRIDGE project) has been implemented since the beginning of 2020 and that its objectives include support for the preparation of a national plan to combat slavery and similar practices, and the reinforcement of a coordination mechanism. The plan also includes activities intended to raise awareness of this issue and the inclusion of victims of slavery in projects to facilitate their independence and social integration. ***The Committee hopes that the assistance of the Office will support the Government in the implementation of the recommendations set out above.***

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

## Oman

### Forced Labour Convention, 1930 (No. 29) (ratification: 1998)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant workers to conditions of forced labour. Migrant workers and migrant domestic workers.* In its previous comments, the Committee noted that migrant workers are covered by Labour Law No. 35 of 2003 (Chapter 2: Regulation of foreigners' work) and that they can terminate their employment contract after a notification period of 30 days. The Committee also noted that migrant domestic workers are not covered by the Labour Law and that their work is regulated by Ministerial Order No. 1 of 2011, on the recruitment of non-Omani workers by private employment agencies, as well as the model contract for recruiting migrant domestic workers. It further noted that under Ministerial Decree No. 189/2004 on the Special Terms and Conditions of Domestic

Workers, migrant domestic workers cannot work for another employer before completing the procedure of changing to another employer according to the national regulations (section 7). The Committee requested the Government to indicate the manner in which this category of workers can freely terminate their employment contract and to report on the number of employment transfers that took place in practice for migrant workers and migrant domestic workers.

The Committee notes the Government's indication in its report that the period of time required to transfer a worker from one employer to another varies from a minimum of one day to a maximum of one month, depending on the readiness of the parties. The Government also states that there is no sponsorship *(kafala)* system in Oman and that the system in place is a temporary contractual relationship pursuant to an employment contract specifying the terms and signed by the worker and the employer. According to the Government, the reduction in the number of cases involving the transfer of workers is a positive reflection of labour force stability in employment, which provides evidence of a decent working environment in Oman as a result of the efforts made by the Ministry of Manpower, in cooperation with the ILO, to implement the Decent Work Country Programme since 2010.

Regarding migrant domestic workers, the Committee notes the Government's indication that the procedures for terminating domestic workers' contracts and the period required to transfer their services from one employer to another are the same procedures as those that apply to all workers.

The Committee notes that pursuant to section 8 of Ministerial Decree No.189/2004, on the Special Terms and Conditions of Domestic Workers, the employment contract can be terminated by either the employer or the worker provided that one month's notice is given. The worker is entitled to terminate the employment contract without providing a prior notice in case of abuse by the employer or a member of the employer's family. The Committee notes however that pursuant to section 7(4), the migrant domestic worker cannot work for another employer before the recruiter relinquishes his sponsorship and completes the necessary procedures in this regard.

The Committee further notes that sections 17 and 20 of Foreign Residence Act No. 16/95 of 1995 provide that residence visas are granted to foreign workers by their sponsors, and the conditions and procedures of transfer of foreign workers to another sponsor are determined by the decision of the Inspector-General of the Ministry of the Interior. In this regard, the Committee notes the Government's information in its supplementary report according to which the implementing regulation of the Foreign Residence Act was amended in 2020. Section 24 of the regulation, which provided that a foreign worker's residence may be transferred to another employer only with the approval of the first sponsor-employer**,** has been amended. It is now provided that a foreign worker's residence may be transferred from one employer to another who has a licence to recruit workers, provided that proof of the end, abrogation or termination of the worker's employment contract is presented, and that proof of approval by the competent government agency of the second employer's contract with the foreign worker is provided. The Government further indicates that 58,744 workers were transferred to a new employer in 2018, and 60,958 in 2019.

The Committee observes that while there are provisions allowing migrant workers, including domestic workers to terminate their employment contract, the conditions for changing employment remain difficult as the work permit of this category of workers is linked to their sponsor-employer pursuant to sections 17 and 20 of the Foreign Residence Act No.16/95 of 1995.The Committee notes that in its concluding observations of 2017, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recommended that the Government of Oman review the *kafala* system, which operates against vulnerable migrant workers. The Committee further notes that this Committee observed that, while the Government had adopted a number of measures to protect the rights of female migrant domestic workers, the *kafala* system still increases their risk of exploitation. CEDAW was also concerned about: the exclusion from the Labour Law of this category of workers and, therefore, from access to the labour courts, their risk of facing charges of "absconding", as well as the fact that forced labour is not criminalized under the Penal Code and is prohibited only under the Labour Law, which does not apply to domestic workers (CEDAW/C/OMN/CO/2-3, paras 30(h) and 39).

The Committee recalls that the sponsorship system creates a relationship in which migrant workers, including domestic workers, are dependent on their sponsors-employers, and that the work permit of this category of workers is linked to their sponsors. The Committee observes that such a system prevents migrant workers from freely terminating their employment and increases their risk of vulnerability to situations amounting to forced labour. ***In this regard, the Committee requests the Government to pursue its efforts to ensure that migrant workers, including migrant domestic workers are not exposed to practices that amount to forced labour. The Committee also requests the Government to continue to provide information on the manner in which migrant workers, including migrant domestic workers, can exercise, in practice, their right to freely terminate their employment and to leave the country, so that they do not fall into abusive practices that may arise from the sponsorship system. Lastly, the Committee requests the Government to continue providing information on the number of migrant workers who have***

***changed employer and whose work permits have been transferred to a new employer, including, if available, statistics disaggregated by gender, occupation and country of origin.***

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

## Pakistan

### Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year as well as on the basis of the information at its disposal in 2019.

*Articles 1(1), 2(1) and 25 of the Convention*. I. *Debt bondage.* 1. *Legislative framework.* The Committee previously noted the Government's statement that the Bonded Labour System (Abolition) Act 1992 remained applicable in the Islamabad Capital Territory (ICT) and Balochistan Province. The Committee noted that the Governments of Khyber Pakhtunkhwa (KPK) Province and Sindh Province adopted the KPK Bonded Labour System Abolition Act 2015, and the Sindh Bonded Labour System (Abolition) Act 2015, respectively, both of which contained provisions prohibiting bonded labour, extinguishing remaining debts, and providing for criminal penalties in case of violations. However, the Committee noted the information of the All Pakistan Federation of Trade Unions (APFTU) that, despite the prohibition of bonded labour by law, this practice persisted in brick kilns due to the absence of effective enforcement of the law. The Committee therefore urged the Government to take immediate measures to ensure the effective application of the newly enacted provincial legislation related to the abolition of bonded labour in practice, and to provide information in this regard.

The Committee notes the Government's information in its report that the Government of Punjab enacted the Punjab Bonded Labour System (Abolition) (Amendment) Act, 2018. It also notes from the Government's supplementary report that the Provincial Cabinet of Balochistan approved the Elimination of Bonded Labour Bill, 2020, which contains provisions that help to curb the bonded and forced labour system in this province, as well as the Rehabilitation of Victims of Bonded Labour Bill, 2020. Both the Bills shall be submitted to the law department for vetting. The Committee further notes the Government's information that the Ministry of Overseas Pakistanis and Human Resource Development (OP and HRD) in consultation with the ILO has initiated the "Gap analysis concerning Protocol of 2014 to the Forced Labour Convention, 1930" with the aim of: (i) identifying the extent to which Convention No. 29 and the Protocol have been incorporated into the national laws and policies; (ii) identifying gaps in the application of Convention No. 29 and areas where current mechanisms and actions to address forced labour need to be strengthened to meet the requirements of the Protocol; and (iii) formulating a set of recommendations to support greater compliance with Convention No. 29 and move towards the ratification of the Protocol.

The Committee notes that according to the findings of the study conducted by the Bureau of Statistics Planning and Development Department of the Government of KPK in May 2017 on bonded labour in the brick kiln industry in the two districts of KPK, of the total of 190 brick kilns in the two districts, a range of four to 270 workers were found working in each kiln. The study reveals that according to the data collected from the workers in the brick kilns, no evidence of forced labour or punishment by owners was found and that they were all treated humanely and according to the laws. The Committee also notes the information from this study that, unlike Punjab, the rights of workers in the brick kiln in KPK are protected mainly due to enforcement of the laws. ***The Committee requests the Government to continue taking effective measures to eliminate bonded labour in all its provinces, including through the effective implementation of the newly enacted provincial laws abolishing bonded labour and to provide information in this regard. It also firmly hopes that the Government will take the necessary measures to ensure that the Balochistan Elimination of Bonded Labour Bill, 2020, and the Rehabilitation of Victims of Bonded Labour Bill, 2020, are enacted in the near future, and requests the Government to provide information on any progress made in this regard.***

2. *Programmes of action.* The Committee previously noted the measures taken by the provincial governments to eliminate bonded labour, such as the adoption and implementation of the Provincial Plan of Action to Combat Bonded Labour and the ILO project entitled "Strengthening Law Enforcement Responses and Action against Internal Trafficking and Bonded Labour" by the Governments of the Provinces of Sindh and Punjab as well as the implementation of the "Elimination of Bonded Labour in Brick Kilns" project in Punjab.

The Committee notes the Government's information that the Provincial Action Plan to combat Bonded Labour in Punjab is in progress and a Legal Aid Service Unit has been established by the Punjab Labour Department to help the victims of bonded labour. It also notes that the Labour and Human Resources Department of Punjab, with support of the ILO technical cooperation project is undergoing a gap analysis of the project entitled "Elimination of Child and Bonded Labour Project – an integrated project for the promotion of decent work of vulnerable workers in Punjab". The Committee also notes that the

Government of Sindh has released and rehabilitated eight families under bondage from the district of Khairpur. The Government further indicates that the Government of Balochistan is making efforts to adopt a specific development scheme for brick kiln workers through a survey in Balochistan. Furthermore, the Committee notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the National Strategic Framework to Eliminate Child and Bonded Labour in Pakistan, which sets 18 recommendations of actions by provinces to eliminate child and bonded labour, has been adopted in 2017. ***The Committee encourages the Government to pursue its efforts to combat and eliminate bonded labour, as well as to continue adopting measures aimed at supporting freed bonded labourers. It requests the Government to continue to provide detailed information on the specific measures implemented in the Punjab and other provinces in this regard, including the actions taken under the National Strategic Framework, as well as information on the concrete results of these initiatives, including the number of bonded labourers and former bonded labourers, benefiting from these measures.***

3. *District vigilance committees (DVCs).* The Committee previously noted the Government's indication that it was impossible to monitor bonded labour through the normal inspection procedure and hence DVCs were established under the provincial bonded labour laws. It noted that the DVCs were operational throughout Punjab while the KPK and Sindh Provinces had enacted new laws on bonded labour, under which the DVCs would be re-established in accordance with the rules framed. Moreover, Balochistan Province indicated that the DVCs would be functionalized without delay. The Committee requested the Government to take the necessary measures to ensure that the DVCs would be re-established in KPK and Sindh Provinces under the new laws and functionalized in Balochistan.

The Committee notes the Government's information that there are seven DVCs working efficiently in the Province of Sindh. These DVCs comprise the elected representatives of the area, representatives of the District Administration, Bar Associations, press, recognized social services and the Labour Department of the Province. The Government report indicates that the Islamabad Capital Territory (ICT) has also established DVCs to eliminate bonded labour from brick kilns. The Punjab Bonded Labour System (Abolition) (Amendment) Act, 2018 contains provisions to strengthen and streamline inspections and reporting through reactivating the DVCs and redefining the role of authorized inspectors. According to the Government's report, in Punjab, 188 DVC meetings were held in all the 36 districts in 2018. Moreover, in 2019, 258 meetings and during the initial two months of 2020, 70 meetings of the DVCs were held. The Government further indicates that in 2018, 7,420 inspections related to bonded labour were carried out in Punjab, 33 complaints were received, 24 complaints were disposed of and one case was referred to the DVC. Moreover, it notes that the Government of Punjab formulated a subcommittee in April 2019 to assist the Provincial Vigilance Committees to review the implementation of the law and action plan relating to the abolition of bonded labour and the rehabilitation of freed bonded labourers; to monitor the working of the DVC; and to address the concerns of the national and international bodies on matters relating to bonded labour. It further notes that in the Province of Balochistan and KPK, the process for the activation of the DVCs will be completed in the near future. ***The Committee encourages the Government to continue its efforts to establish, reinforce and strengthen the DVCs in all the provinces, including in Balochistan and KPK. It also requests the Government to continue to provide information on the functioning of the DVCs, including the number of bonded labourers identified and rescued, and to provide copies of monitoring or evaluation reports. It further requests the Government to indicate if any legal action has been taken against persons employing bonded labourers, and to provide information on the number of prosecutions, convictions, and specific penalties applied, as well as copies of relevant court decisions.***

4. *Data-gathering measures to ascertain the current nature and scope of bonded labour.* In its previous comments, the Committee urged the Government to pursue its efforts to ensure that a survey of bonded labour would be undertaken in each province of the country in the near future, in cooperation with employers' and workers' organizations and other relevant partners.

The Committee notes the Government's reference to the study conducted in 2017 in the brick kiln industry in the two districts of KPK. The Committee notes the Government's indication that due to the traditionally hidden nature of the cases of bonded labour, no survey has been conducted so far on bonded labour. However, provinces are making efforts to conduct surveys and research studies on the subject, for formulation of a comprehensive bonded labour eradication policy. ***The Committee encourages the Government to pursue its efforts to conduct surveys and research studies on bonded labour in all the provinces. It requests the Government to provide information on any measures taken in this regard, as well as copies of the surveys, once completed.***

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

## **Abolition of Forced Labour Convention, 1957 (No. 105)** (ratification: 1960)

The Committee notes the supplementary information provided by the Government on matters raised in previous direct request addressed to it, and otherwise repeats the content of its observation adopted in 2019 which read as follows.

*Articles 1(a) and (e) of the Convention. Penalties involving compulsory labour as a punishment for expressing political views and as a means of religious discrimination.* In its previous comments, the Committee observed that sections 10–13 of the Security of Pakistan Act 1952; sections 5, 26, 28 and 30 of the Press, Newspaper, News Agencies and Books Registration Ordinance 2002; section 32(2) and (3) of the Electronic Media Regulatory Authority Ordinance 2002; and sections 8 and 9 of the Anti-Terrorism Act 1997, provided for restrictions on the expression of political views and provided for penalties of imprisonment involving compulsory labour in cases of violations. The Committee also referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punishable with penalties of imprisonment (which may involve compulsory labour) for a term of up to three years. In this regard, the Committee noted the Government's statement that, the Ministry of Overseas Pakistanis and Human Resources Development submitted a proposal to the Ministry of Law and Justice to consider bringing any breach of the civil and social rights and liberties beyond the purview of criminal punishment; to limit penalties for such breaches to fines or other sanctions that does not involve compulsory labour; and to confer a special status to prisoners convicted of political offences. The Committee therefore requested the Government to continue its efforts to bring the above-mentioned laws into conformity with the Convention in the near future, and requested the Government to provide information on any progress made in this regard.

The Committee notes that the Government's report does not contain any information on this matter. ***The Committee therefore urges the Government to take the necessary measures to amend the above-mentioned provisions, either by repealing them, by limiting their scope to acts of violence or incitement to violence, or by replacing sanctions involving compulsory labour with other kinds of sanctions (e.g. fines), in order to ensure that no form of compulsory labour (including compulsory prison labour) may be imposed on persons who, without using or advocating violence, express certain political views or oppositions to the established political, social or economic system. It also requests the Government to provide information on any progress made in this regard.***

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

## Paraguay

### Forced Labour Convention, 1930 (No. 29) (ratification: 1967)

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

The Committee notes the discussion held in June 2017 in the Committee on the Application of Standards of the International Labour Conference (hereinafter the Conference Committee). The Committee notes the Government's report received in 2019, and the observations of the International Organisation of Employers (IOE), received on 1 September 2017, the International Trade Union Confederation (ITUC), received on 1 September 2017 and 9 September 2019, the Central Confederation of Workers Authentic (CUT-A), received on 2 September 2017 and 30 August 2019, and the National Confederation of Workers (CNT), received on 26 August 2019.

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Institutional framework for action to combat forced labour*. In its previous comments, the Committee considered that the adoption of the National Strategy for the Prevention of Forced Labour 2016-20 (Decree No. 6285 of 15 November 2016) constituted an important step in action to combat forced labour. It urged the Government to take the necessary measures for the effective implementation of the Strategy, particularly in regions and sectors where indicators of the existence of forced labour have been detected and to raise awareness of the issue. The Committee notes that, in its conclusions, the Conference Committee urged the Government to: continue including the social partners in the process of the implementation of the Strategy; develop regional action plans; and develop priority action to raise awareness of forced labour and protect victims.

The Committee notes the Government's indication in its report that Decree No. 7865 of 12 October 2017 provided for the establishment of the National Commission on Fundamental Labour Rights and the Prevention of Forced Labour (CONTRAFOR), under the responsibility of the Ministry of Labour, Employment and Social Security (MTESS), replacing the Commission on Fundamental Labour Rights and the Prevention of Forced Labour. The participants in the Commission include the representatives of 14 ministries, the Paraguay Indigenous Institute (INDI) and the Council of Indigenous Peoples of Chaco, as well as representatives of employers' and workers' organizations. The general function of the CONTRAFOR is to coordinate public policies for the prevention and eradication of forced labour at the national level, and specifically to determine the processes for the implementation of the National Strategy for the Prevention of Forced Labour 2016-20 and to propose relevant adjustments. The Committee also welcomes the adoption, through the CONTRAFOR, of the Plan of Action for the prevention and eradication of forced labour in Paraguay 2017-19. The Plan covers three areas: (i) the preparation of a diagnostic study on the

situation with regard to forced labour; (ii) interinstitutional and tripartite coordination (including the coordination of action for the implementation of the Strategy and the strengthening of labour inspection so as to be able to deal effectively with complaints and denunciations); and (iii) awareness and visibility of the issue of forced labour. The Plan also calls for the Monitoring and Evaluation Commission, which includes representatives of social partners, to prepare an annual report on progress and the achievement of the planned objectives as a basis for making adjustments and coordinating the development of the next plan of action.

The Committee notes that, in her 2018 report on her mission to Paraguay, the United Nations Special Rapporteur on contemporary forms of slavery commended the Government on the positive steps taken in the development of a legal and institutional framework in the country to combat modern forms of slavery and also emphasized as a positive development the greater awareness in society of the various forms of exploitation (A/HRC/39/52/Add.1, paragraph 18).

***The Committee welcomes the efforts made by the Government to strengthen the institutional framework to combat forced labour and firmly encourages the Government to continue taking measures for the full implementation of the National Strategy for the prevention of forced labour and the Plan of Action for the prevention and eradication of forced labour in Paraguay 2017-19. The Committee requests the Government to provide information on the results achieved, including specific information on the roles assigned to the institutions responsible for its implementation, interinstitutional coordination mechanisms, the adoption of regional plans, the annual reports prepared by the Monitoring and Evaluation Commission and the diagnostic study on forced labour, including information on the factors that are identified as potential facilitators of forced labour. The Committee further requests the Government to provide information on the process of the development and adoption of the second National Strategy for the prevention of forced labour and encourages the Government to promote tripartite dialogue in its action to combat forced labour.***

2. *Exploitation of the labour of indigenous workers in the Chaco*. For several years, the Committee has been urging the Government to take measures to bring an end to the economic exploitation, and particularly the debt bondage of indigenous workers in the Chaco region. The Committee has drawn attention to the need to reinforce the presence of the State in that region so as to be able to identify victims and carry out investigations of the complaints received. In this regard, the Committee previously noted the establishment of a Labour Office in the locality of Teniente Irala Fernández (central Chaco) and the recruitment of 30 labour inspectors at the national level, the establishment of new courts in the Chaco region (including labour tribunals) and of the subcommission of the Commission on Fundamental Labour Rights and the Prevention of Forced Labour in the Chaco region. The Committee observes that the Conference Committee also urged the Government to allocate sufficient material and human resources to the Ministry of Labour offices in the Chaco region to receive workers' complaints and reports of forced labour and take appropriate measures to ensure that in practice victims are in a position to turn to the competent authorities.

In its report, the Government refers to the conclusion, in July 2017, of a Framework Interinstitutional Cooperation Agreement between the MTESS and the government of the Department of Boquerón with a view to the strengthening of the activities of the MTESS in the Chaco region in order to, inter alia, facilitate the access to information and complaint procedures for all members of indigenous peoples. Within this framework, the Office of the Labour Department for Indigenous Peoples was established in March 2018 in the city of Filadelfia, Department of Boquerón (Chaco). The Office has since been strengthened and offers an accessible complaints procedure for workers and is raising the awareness of indigenous peoples concerning their rights and providing them with advice. The Government also provides information on awareness-raising campaigns ("The Paraguayan Chaco with decent work") and capacity-building workshops for the population of the Paraguayan Chaco on their labour rights in various languages (Spanish, Guaraní, Enxet, Sanapaná, Nivaclé, Ayoreo, Toba Qom, German and the Menonnite dialect), as well as for the private sector and public officials. The Government indicates that since 2018 it has been taking action to strengthen the Regional Office of the MTESS in the Chaco, including: the preparation of a list of public institutions in the three districts of the Boquerón (Filadelfia, Mariscal Estigarribia and Loma Plata) with which the Regional Office has constant relations, the development of a list of indigenous communities in each district; and the organization of the Office to receive, provide advice to and mediate between employers and workers. In the month of January 2019, a total of 117 persons received advice from the MTESS in the city of Filadelfia.

The Committee notes that, in its observations, the ITUC indicates that the Filadelfia Office does not have the minimum level of administrative resources necessary for its operation nor the independence to ascertain possible irregularities on site. The ITUC indicates that the Government has not provided information to workers' organizations on the activities of the Office, the number of complaints received and the action taken on forced labour and other violations of labour rights. The CUT-A indicates that the Filadelfia Office does not have staff trained in "building a case" and gathering evidence, or in interviewing

potential victims. The CUT-A adds that it does not have information on the outcome of any interventions that have been made, hence the ongoing lack of exemplary penalties.

The Committee notes that, in her report, the United Nations Special Rapporteur observes that, according to information received, cooperatives and ranches generally comply with the national legislation and there have been recent improvements in the level of compliance in the Chaco region. Nevertheless, she remains concerned at cases of forced and slave labour in smaller workplaces and more remote and less accessible ranches, and at labour practices that she views as exploitative (para. 50).

***The Committee encourages the Government to intensify its efforts to facilitate the access of indigenous workers to administrative and judicial procedures to report situations of forced labour, taking into account their geographical location, linguistic and cultural situation and educational level. In this regard, the Committee requests the Government to continue taking measures to ensure the presence of inspectors in the most remote areas of the Chaco where indigenous workers are present, and to indicate the current number of inspectors covering the region and their geographical distribution, the number of inspections undertaken, complaints received and administrative and criminal penalties imposed, and the manner in which the Ministry of Labour cooperates with the Office of the Public Prosecutor and the police for the investigation of cases of forced labour. The Committee also requests the Government to indicate the measures taken to protect workers who have reported being the victims of forced labour and in providing them with support and assistance. It also requests it indicate the manner in which the MTESS collaborates with the Paraguay Indigenous Institute for the identification and action to address problems affecting the indigenous peoples of the Chaco which make them vulnerable to situations of forced labour.***

3. *Article 25. Application of penal sanctions.* The Committee previously noted that persons who exact forced labour (debt bondage and other practices involving forced labour) have not been prosecuted or penalized. In the same way as the Conference Committee, the present Committee requested the Government to ensure that the criminal law contains sufficiently specific provisions adapted to national circumstances to enable the competent authorities to initiate criminal proceedings against the perpetrators of these practices. The Government indicates that a preliminary draft Bill has been prepared to criminalize forced labour and that it establishes a sentence of imprisonment of up to five years or a fine for any person "who through force or threats compels another person to perform work or provide a service, irrespective of whether or not it is paid". The preliminary draft text contains a list of aggravating circumstances which carry a sentence of imprisonment of up to ten years. These circumstances include the fact of submitting the victim to a situation of slavery, servitude or degrading conditions that undermine their humanity or the victim being in a seriously defenceless or vulnerable situation. The Committee also notes the adoption of the Tripartite and Interinstitutional Guide on Intervention in Cases of Forced Labour, which contains indicators of forced labour and proposes intervention maps in cases of complaints of forced labour, from both a criminal and a labour perspective. The Guide makes it clear that in cases where there has been no complaint, but it is known that there is a situation of forced labour, the Office of the Public Prosecutor must take action at its own initiative.

The Committee observes that the penalty envisaged when there are no aggravating circumstances, that is a sentence of imprisonment of up to five years or a fine, is not sufficiently dissuasive. Indeed, the Committee has already indicated that "when the envisaged sanction consists of a fine or a very short prison sentence, [...] it does not constitute an effective sanction in light of the seriousness of the violation and the fact that the sanctions need to be dissuasive" (2012 General Survey on the fundamental Conventions, para. 319). ***While welcoming the preparation of draft legislation criminalizing and penalizing forced labour, the Committee trusts that the Government will take the necessary measures to review the draft legislation to ensure that the exaction of forced labour is punishable by criminal penalties that are really effective and sufficiently dissuasive. The Committee trusts that the draft legislation will be adopted in the very near future and requests the Government to provide information on the awareness-raising and capacity-building activities undertaken to promote knowledge of the legislation and its use by the competent authorities. The Committee also once again requests the Government to provide information on the prosecutions initiated against persons who exact forced labour and their outcome.***

*Article 2(2)(c). Obligation to work imposed on non-convicted detainees.* For several years, the Committee has been emphasizing the need to amend the Act on the prison system (Act No. 210 of 1970), under the terms of which prison labour shall be compulsory for persons subject to security measures in a prison (section 10 in conjunction with section 39). The Committee previously requested the Government to take measures to formally repeal these provisions of the Act. The Committee notes the Government's indication that in 2017 a formal proposal was submitted for the repeal of section 39 of the Prison Act No. 210/70 in order to harmonize it with the provisions of the Convention. This proposal was submitted to the Office of the President of the Republic for referral to the National Congress. The proposal was sent back to the MTESS by the Office of the President accompanied by legal opinion No. AJ/2017/No. 1073 of 16 July 2018, with the recommendation to obtain the legal opinion of the Ministry of Justice concerning the draft

text. ***The Committee urges the Government to continue taking the necessary measures for the prompt approval of the draft legislation repealing section 39 of Act No. 210/70 on the prison system and to provide information in this regard.***

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

## Peru

### Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee takes note of the information provided by the Government in its 2019 report as well as the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the joint observations of the Autonomous Workers' Confederation of Peru (CATP); the Confederation of Workers of Peru (CTP); the General Confederation of Workers of Peru (CGTP); and the Single Confederation of Workers of Peru (CUT-Perú) transmitted by the Government with its supplementary information.

*Articles 1(1) and 2(1) of the Convention. Efforts to combat forced labour. (a) National Plan to combat forced labour (PNLCTF).* The Committee previously noted the lack of information provided by the Government on the implementation of the three strategic objectives of the Second National Plan to combat forced labour for 2013–2017 (PNLCTF-II), as well as the observations made by the CATP that the lack of funding had prevented the implementation of actions planned under the PNLCTF-II or the strengthening of the capacities of the National Committee on Combating Forced Labour (CNLCTF) at both national and regional levels, particularly in the regions containing the areas most at risk. The Committee requested the Government to provide full information on any evaluation made on the implementation of the PNLCTF-II as well as on the measures taken to strengthen the capacities of the CNLCTF, while hoping that it would be possible to draw up regional plans for combating forced labour that take account of the specific features of forced labour situations that may exist in the various regions of the country. The Committee notes the Government's statement, in its report, that according to the evaluation made in 2018 by the CNLCTF, with the assistance of the ILO, it was highlighted that the design of the PNLCTF-II, and more particularly the lack of basis values or targets expressed in absolute terms, did not enable any assessment of its results and effectiveness and that involved institutions only reported partly on what had been done. The Government adds however that the implementation of the PNLCTF-II resulted in better knowledge of forced labour, in particular in the Ucayali and Madre de Dios regions where two case studies were conducted with the assistance of the ILO. Moreover, in 2018 several workshops to formulate regional plans to combat trafficking in persons while incorporating actions against forced labour were organized in the Cusco, Loreto, Amazonas, Tumbes and Ica regions. The Committee takes due note of the adoption of the PNLCTF-III for 2019–2021 (Supreme Decree No. 015-2019-TR of 18 September 2019) which sets two specific objectives, namely: (i) to develop an adequate capacity of government institutions to prevent and eliminate forced labour, in particular through specific actions aimed at preventing and detecting forced labour cases, providing assistance to victims of trafficking, sanctioning those perpetrators and restoring victims' rights; and (ii) to reduce public tolerance towards forced labour through capacity-building and awareness-raising activities, in particular among civil servants. The Committee notes that in their joint observations the CATP, CTP, CGTP and CUT-Perú emphasize that the implementation of the PNLCTF-III requires the allocation of adequate resources for the institutions that are part of the CNLCTF. ***Welcoming the adoption of the PNLCTF-III and noting that it explicitly provides for the development of a monitoring system and annual evaluation reports, the Committee requests the Government to provide information on the implementation of the two strategic objectives of the PNLCTF-III and on any evaluation undertaken on the measures taken within this framework. It once again requests the Government to provide information on any measures taken to strengthen the capacities of the CNLCTF at both national and regional levels, as well as on the content and impact of any regional plans for combating forced labour implemented in the various regions of the country, in particular in those containing the areas most at risk.***

*(b) Diagnosis.* The Committee previously noted that, in March 2017, the Ministry of Employment and Employment Promotion (MTPE), the National Institute of Statistics and Information Technology (INEI) and the ILO signed a cooperation agreement aimed at collecting statistical information to discover the true extent of the problem of forced labour in the most vulnerable areas of the country and hoped that such data could be collected quickly. The Committee notes the Government's indication that, in the framework of this cooperation agreement, the INEI will conduct a survey on the prevalence of forced labour in the Cusco region, with the assistance of the ILO, which will provide quantitative statistical information and improve governmental policies and actions. In its supplementary information, the Government indicates that technical meetings were organized, a questionnaire was prepared and pilot testing was carried out in that respect, at the end of 2019. The Government indicates however that as a result of the COVID-19 pandemic these actions have currently been suspended. The Committee notes that,

in their joint observations, the CATP, CTP, CGTP and CUT-Perú encourage the Government to conduct the survey in order to generate reliable data to contribute to the improvements of public policy interventions in the different economic sectors. Moreover, the Committee notes that, while the Bridge Project in Peru, which provided ILO technical assistance, ended on 19 October 2019, the ILO plans to continue supporting the Government as well as employers' and workers' organizations in the implementation of the PNLCTF-III, including by conducting the first labour force survey in 2020–21. ***The Committee trusts that the Government will make every effort to ensure that in the near future quantitative and qualitative data on forced labour is collected, analysed and communicated to the competent authorities to enable better targeting of their actions, appropriate use of human and financial resources and identification of victims of forced labour. It hopes more particularly that the technical assistance of the Office will help the Government to achieve tangible progress in this respect and requests the Government to provide information on the results of any statistical information collected on forced labour, as well as any measures adopted as a result.***

*(c) Labour inspection.* The Committee previously noted that the National Labour Inspection Supervisory Authority (SUNAFIL) had begun a restructuring of the Special Labour Inspection Unit for Combating Forced and Child Labour (GEIT) set up in 2008 in order to strengthen its efficiency and that, in April 2016, the protocol for action on forced labour drafted by SUNAFIL, containing basic guidance to ensure coordinated and effective action by the labour inspection system in relation to the prevention and elimination of forced labour, was adopted. Noting the CATP's observations on the lack of funding faced by the SUNAFIL, the Committee requested the Government to strengthen its efforts to ensure that the GEIT had adequate human and material resources to cover the whole of the national territory quickly and effectively. The Committee takes note of the adoption of Resolution No. 05-2018-SUNAFIL of 10 January 2018 which: (i) establishes a new specialized inspection group to combat forced labour and child labour (GEIT-TFI) which will consist of at least ten inspectors (supervisor, labour inspectors and auxiliary inspectors); and (ii) approves Protocol No. 001-2018- SUNAFIL /INII concerning the actions to be undertaken by the GEIT-TFI, a second version of which was adopted by Resolution No. 152-2019-SUNAFIL of 7 May 2019. According to the protocol for action, the GEIT-TFI is responsible for conducting inspections to monitor and provide guidance on forced labour and child labour; generating information; promoting intergovernmental and multi-sectorial collaboration; participating in training and internship; and suggesting improvements regarding the functioning of SUNAFIL. The Committee also notes that the Protocol for action on forced labour was adopted by Resolution No. 217-2019-SUNAFIL of 9 July 2019 with a view to collecting and using information that will enable the identification of economic sectors or regions in which forced labour exists and ensure the dissemination of information, awareness-raising activities on the protection of fundamental rights at work, as well as capacity-building of the staff of the labour inspectorate on forced labour issues. It notes that the protocol provides for administrative fines to be imposed in case of forced labour situations (paragraph 14.2 of the Protocol). The Committee further notes that the PNCLTF-III provides for specific actions to train inspectors in detecting forced labour situations as well as in order to ensure that a sufficient number of professionals are specialized on this issue and that sufficient equipment, material and logistical resources are made available so that they can carry out their inspection functions more effectively. The Committee notes that, in its supplementary information, the Government indicates that 174 inspection orders on forced labour were issued, 29 infractions were detected and ten penalties in the form of fines were imposed through decisions under administrative disciplinary proceedings. ***The Committee requests the Government to continue to take measures to strengthen the institutional capacity of SUNAFIL, and more particularly the GEIT-TFI, including by ensuring adequate human and material resources to cover the whole of the national territory quickly and effectively. It further requests the Government to provide information on the impact of any measures taken to that end, in particular within the framework of the PNLCTF-III and Resolution No. 217-2019-SUNAFIL. Given that, as a result of inspections carried out by the GEIT-TFI, workers in situations of forced labour can be identified and released, and the courts can be provided with documents which serve to bring civil and criminal proceedings against the perpetrators of these practices, the Committee requests the Government to continue providing information on the number of inspections conducted, the regions targeted, the nature of violations recorded and the administrative penalties imposed.***

*Article 25. Application of effective penalties.* The Committee previously welcomed the incorporation of the provisions of sections 153-B (''sexual exploitation''), 153-C (''slavery and other forms of exploitation'') and 168-B (''forced labour''), establishing penalties of imprisonment, into the Penal Code. The Committee takes note of the adoption of Act No. 30924 of 29 March 2019, which amends section 168-B of the Penal Code by adding penalties of fines to be imposed on perpetrators of forced labour together with the custodial sentence. The Committee also notes that, in their joint observations, the CATP, CTP, CGTP and CUT-Perú express concern about a legislative proposal (Bill No. 05556/2020 CR) criminalizing ''human exploitation'' that would result in the removal of the offences established in the Penal Code, among which sexual exploitation, forced labour and slavery.

The Committee further notes that, under the inter-institutional cooperation framework agreement signed between the Ministry of Labour and Promotion of Employment and the ILO, on 6 August 2018,

several actions are planned for the organization of workshops with the Public Prosecutor's Office, the judiciary and the national police to strengthen their capacity to investigate, process and effectively sanction cases of forced labour. In its supplementary information, the Government refers to several workshops organized in that regard, in collaboration with the ILO, in 2020. The Committee notes that the PNLCTF-III also provides for specific actions to train the national police and prosecutors in the detection of forced labour situations. ***The Committee encourages the Government to pursue its efforts in this regard and requests it to provide information on the measures adopted, in particular in the framework of the PNLCTF-III and the inter-institutional cooperation framework agreement signed with the ILO, to further strengthen the capacity of law enforcement authorities with a view to ensuring the detection of forced labour, the identification and protection of victims and the investigation and prosecution of all cases of forced labour. It also requests the Government to provide information on investigations conducted, judicial proceedings initiated and penalties imposed pursuant to sections 168-B, 153-B and 153-C of the Penal Code. Lastly, the Committee requests the Government to provide its comments with respect to the observations of the trade union organizations on Bill No. 05556/2020 CR.***

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

## Philippines

### Forced Labour Convention, 1930 (No. 29) (ratification: 2005)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Law enforcement measures and penalties*. The Committee previously requested the Government to provide information on the measures taken to strengthen the capacity of law enforcement agencies and the activities undertaken within the framework of the National Strategic Action Plan for 2012–2016.

The Committee notes the Government's indication in its report that the Anti-Trafficking Task Forces all over the country have conducted a total of 136 training, capacity-building and seminars on trafficking in persons and other related topics which were attended by a total of 6,593 participants. Some 2,098 came from private sectors and non-government organizations while 4,495 were government personnel. The Committee further notes the Government's indication in its supplementary report that in 2019, the Anti-Trafficking Task Forces conducted training on trafficking in persons for the purpose of labour exploitation for 130 members of government agencies. In addition, the Inter-Agency Council Against Trafficking (IACAT) conducted training on handling trafficking in persons and victim protection.

The Government also indicates in its report of 2019 that the National Bureau of Investigation (NBI) is in the final drafting stage of the creation of the NBI Manual and Standard Operating Procedures for Trafficking in persons and online sexual exploitation of children cases. This aims to improve the efficiency of investigations and operations involving trafficking in persons and online sexual exploitation of children cases. Moreover, in 2018, the NBI conducted 32 operations nationwide causing the arrest of 67 offenders and the rescue of 620 victims, 123 of whom are minors. There were a total of 201 illegal recruitment cases, 75 (37 per cent) of which were filed in Court. The National Police has investigated a total of 300 trafficking in persons cases, which resulted in the rescue of 1,039 victims and the arrest of 498 suspects. The Committee further notes that in 2019, the NBI conducted 55 anti-trafficking operations, resulting in the arrest of 234 offenders, and the rescue of 504 victims. In addition, the national police investigated 153 cases of trafficking in persons, rescued 729 victims and arrested 222 suspects. According to the Government, the establishment of 24 Anti-Trafficking Task Forces in the country with 226 prosecutors significantly contributed to the increase in the prosecution of cases of trafficking in persons. In 2019, the Anti-Trafficking Task Forces comprised 236 prosecutors, enhancing local law enforcement, including in rescue operations, to ensure that cases are reported and filed with the local prosecutor. The Committee notes that in 2018, a total number of 88 persons were convicted, in comparison with 48 in 2017. In 2019, 76 convictions were pronounced for cases of trafficking in persons, with a total of 85 persons convicted.

The Committee notes that a 2017–2021 National Strategic Action Plan against trafficking in persons (Strategic Action Plan) has been adopted. In this regard, the Government indicates in its supplementary report that the Strategic Action Plan details core programmes and planned outcomes by key result areas: (i) prevention and advocacy; (ii) protection, recovery, rehabilitation and reintegration; (iii) prosecution and law enforcement; and (iv) partnership and networking. The IACAT is responsible for monitoring the full implementation, cooperation and coordination of the national anti-trafficking response. As part of the implementation of the Strategic Action Plan, six anti-trafficking task forces were established to intercept the operations of suspected trafficking at points of entry on land, and in airports and seaports, resulting in the interception of six alleged offenders in 2019 and the rescue of 1,002 victims. In addition, an Anti-Trafficking capacity-building module was developed for local government units to strengthen their

capacity to provide concrete responses in addressing trafficking in persons. Committees on anti-trafficking and violence against women were created in a large number of provinces, cities and municipalities of the country. In the area of prevention and advocacy, educational and awareness communication materials were developed on specific types of trafficking.

The Committee also observes from the UNICEF 2016 Summary Report on Situation Analysis of Children in the Philippines that domestic and cross-border trafficking of women and children for sexual exploitation continues, with 1,465 victims of trafficking assisted in 2015, and sex tourism reportedly on the rise (page 24). ***Taking due note of the measures adopted by the Government, the Committee requests it to continue taking measures to strengthen the capacity of law enforcement bodies to combat trafficking in persons and identify victims of trafficking, as well as to provide statistical information on the number of legal proceedings initiated, convictions handed down and penalties imposed. The Committee also requests the Government to continue indicating the measures that have been taken to implement the 2017–2021 National Strategic Action Plan against trafficking in persons, and the results achieved in this regard.***

*Complicity of law enforcement officials in trafficking activities*. The Committee notes the Government's indication in its supplementary report according to which the IACAT applies a zero-tolerance policy towards any form of complicity by government officials in cases of trafficking. Reports of allegations against government officials are therefore thoroughly investigated. In 2019, most allegations of government complicity in cases of trafficking in persons involved illegal activities at the country's entry and exit points. Several measures were taken to combat the involvement of government officials in corrupt practices, including: (i) investigations of alleged trafficking in persons networks at airports, of immigration officials identified as having facilitated trafficking in persons, and of the Regional Consular Office in Cobato where most fraudulent passports were issued; and (ii) the monitoring of personnel at the Bureau of Immigration during inspections of passengers leaving the country.

The Government indicates that five officials were convicted for cases relating to trafficking in persons between 2009 and 2020, including three police officers. All were sentenced to life imprisonment. The Government further indicates that the IACAT is developing a guideline to investigate and resolve corruption cases related to trafficking in persons. ***The Committee requests the Government to pursue its efforts to ensure that complicit law enforcement officials are subject to thorough investigations and prosecutions, and that appropriate and dissuasive penalties are imposed. It requests the Government to continue providing information on the number of cases registered and prosecuted, as well as the sanctions imposed.***

*Protection and assistance to victims*. The Committee notes the Government's indication that the Department of Social Workers and Development (DSWD) implements the Recovery and Reintegration Program for Trafficked Persons (RRPTP) since 2011. The RRPTP is a comprehensive programme that ensures that adequate recovery and reintegration services are provided to trafficked persons. Utilizing a multi-sectoral approach, it delivers a complete package of services that will enhance the psychosocial, social and economic needs of the victims. It also enhances the awareness, skills and capabilities of the families and the communities where the trafficked persons will eventually return. It also improves community-based systems and mechanisms that ensure the recovery of the victims, and prevents other families and community members from being victims of trafficking. In 2018, according to the DSWD, the RRPTP served and assisted a total of 2,318 identified trafficked persons, of whom 1,732 (75 per cent) are women while 611 (26 per cent) are minors. The Government further indicates in its supplementary report that in 2019, the RRPTP served and assisted 2,041 victims of trafficking. In addition, financial assistance was provided to 27 victims through the Victim Compensation Programme of the Department of Justice in 2019. A total of 291 victim-witnesses also received assistance under the Victim-Witness Coordinator Programme, which is a pilot project aimed at encouraging cooperation during the investigation, prosecution and trial of cases of trafficking in persons. The Government adds that the IACAT Operations Centre (OpCen) serves as a referral centre for victim protection and assistance, including referrals to reintegration services. In 2019, OpCen provided transportation and security assistance to 171 victims of trafficking in persons.

The Government also indicates that in June 2018, a Residential Care Facility for Male Victims of Trafficking in Mindanao was set up in collaboration with the Local Government Unit of Tagum City. It aims to provide services in recovery, rehabilitation and reintegration of trafficked victims. As of 2018, there were 44 residential care facilities available in the country for victims of trafficking: 24 for children; 13 for women; 1 for men; 4 for older persons; and 2 for processing centres. ***The Committee requests the Government to continue to take measures to ensure that appropriate protection and assistance is provided to victims of trafficking and to provide statistical information on the number of victims who have been identified, as well as those who have benefited from the RRPTP services.***

*Articles 1(1) and 2(1). Vulnerable situation of migrant workers with regard to the exaction of forced labour*. The Committee notes the Government's indication that, the Department of Foreign Affairs, Department of Health, Department of Labor and Employment, Department of Social Welfare and

Development, Department of Interior and Local Government, Manila International Airport Authority, Philippine Overseas Employment Administration and Philippine Charity Sweepstakes Office, issued a joint memorandum circular No. 2017-0001 dated 16 June 2017 entitled "Integrated Policy Guidelines and Procedures in the Implementation of the Inter-Agency Medical Repatriation Program (IMRAP) for Overseas Filipinos". This programme aims to establish an integrated system and process flow in medical repatriation among appropriate government agencies and stakeholders. In addition, the Government indicates that the Philippine Overseas Employment Administration (POEA) provides overseas jobseekers with Pre-Employment Orientation Seminar (PEOS) on, for example, legal modes of recruitment, the procedures and documentary requirements when applying for jobs, and the government services available to overseas job applicants and hired workers. For 2018, the POEA conducted community-based PEOS with a total of 30,517 participants, among them 9,935 males, 10,848 females and 9,736 with unspecified sex. The POEA has also entered into partnerships with 50 local government units and one non-government organization and conducted 48 anti-illegal recruitment and anti-trafficking in persons seminar nationwide, with 1,695 male participants and 1,544 female participants. The Committee notes the Government's indication in its supplementary report that prior to the departure of Filipino workers abroad, the Department of Labour and Employment ensures that all workers are properly documented. Pre-departure and post-arrival orientation seminars are also organized.

To address the vulnerability of overseas Filipino workers, particularly female domestic workers, the Government indicates that it has concluded bilateral labour agreements with destination countries and conducts regular dialogue with them to ensure that workers' rights and welfare are protected. In addition, the Philippine overseas labour offices (POLOs) intervened in 40 countries to help workers address issues and concerns related to their working conditions and welfare, including shelter, repatriation assistance and other welfare services. From July 2016 to May 2020, 3,000,506 overseas Filipino workers received on-site assistance from the POLOs. Furthermore, the Government indicates that the overseas Filipino workers command centre (OCC) of the Department of Labour and Employment ensures that all workers' concerns are addressed promptly. The OCC serves as the 24/7 central referral and action centre for all migrant workers' inquiries. The Government states that, from 2018 to 2020, a considerable number of private recruitment agency licences were cancelled due to violations of recruitment laws and regulations, and a number of recruiters were convicted.

***Taking due note of the measures adopted by the Government, the Committee requests it to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. The Committee also requests the Government to continue to supply information on the pre-departure services provided for migrant workers, indicating also the number of migrant workers victims of forced labour practices and the assistance received in such cases. Lastly, the Committee requests the Government to indicate the number of recruiters convicted for illegal practices and the penalties imposed in this regard.***

## Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Article 1(a) of the Convention. Punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee hoped that the Government would take the necessary measures within the framework of the revision of the Penal Code, to amend sections 142 (inciting to sedition by means of speeches, proclamations, writings or emblems; uttering seditious words or speeches; writing, publishing or circulating scurrilous libels against the Government) and 154 (publishing any false news which may endanger the public order or cause damage to the interest or credit of the State, by means of printing, lithography or any other means of publication) of the Penal Code under which penalties of imprisonment (involving compulsory prison labour) may be imposed.

The Committee notes the Government's indication in its report that sections 142 and 154 of the revised Penal Code do not provide for a penalty of forced labour, rather a penalty of "prision correccional" under section 142 and a penalty of "arresto mayor" under section 154. Both penalties range from six months and one day to six years imprisonment. In this connection, the Committee once again observes that sections 142 and 154 of the Revised Penal Code are worded in terms broad enough to lend themselves to be applied as a means of punishment for the peaceful expression of views, enforceable with sanctions involving compulsory prison labour under Chapter 2, section 2, of the Bureau of Corrections manual. The Committee further notes that, in the 2017 Report of the Officer of the United Nations High Commissioner for Human Rights, the Human Rights Committee expressed regret that the Cybercrime Prevention Act of 2012 had criminalized libel over the internet. It urged the State party to consider the decriminalization of defamation (A/HRC/WG.6/27/PHL/2, paragraph 39). The Committee notes the Government's information in its supplementary report according to which the implementing rules and

regulations of the Cybercrime Prevention Act provide that libel committed through a computer system or any other similar means is punishable by a prison sentence, a fine, or both. The Committee therefore notes with ***regret*** that under section 4(c)(4) of the Cybercrime Prevention Act, libel may be punishable by a prison sentence involving compulsory prison labour. The Committee recalls that *Article 1(a)* prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It emphasizes that the range of activities which must be protected under this provision, from punishment involving forced or compulsory labour, thus includes the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media (see 2012 General Survey on the fundamental Conventions, paragraph 302)). ***The Committee therefore, urges the Government to take the necessary measures to repeal or amend sections 142 and 154 of the Revised Penal Code, as well as section 4(c)(4) of the Cybercrime Prevention Act in order to ensure that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system.***

*Article 1(d). Punishment for having participated in strikes*. Over a certain number of years, the Committee has been drawing the Government's attention to section 263(g) of the Labor Code under which in the event of a planned or current strike in an industry considered indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and settle it or certify it for compulsory arbitration. Furthermore, the President may determine the industries indispensable to the national interest and assume jurisdiction over a labour dispute. The declaration of a strike after such "assumption of jurisdiction" or submission to compulsory arbitration is prohibited (section 264), and participation in an illegal strike is punishable by imprisonment (section 272(a) of the Labor Code), which involves an obligation to perform labour. Furthermore, the Revised Penal Code also provides for sanctions of imprisonment for participation in illegal strikes (section 146). The Committee requested the Government to take the necessary measures to amend the above-mentioned provisions of the Labor Code and the Revised Penal Code so as to ensure their compatibility with the Convention.

The Committee notes the Government's explanation on the absence of a forced labour penalty for participation in an illegal strike under the provisions of the Labour Code. The Committee further notes the Government's information in its supplementary report according to which a House Bill entitled the "Act limiting the power to assume jurisdiction over labour disputes involving essential services by the President of the Philippines" was filed on 24 July 2019 and is pending before the House of Representatives Committee on Labour and Employment. The Bill seeks to limit Government intervention leading to compulsory arbitration to essential services in the strict sense of the term. The Committee points out that pursuant to sections 272(a) and 264 of the Labour Code and 146 of the Penal Code, participation in illegal strikes is punishable with imprisonment from three months to three years, and from six months and one day to six years, respectively, penalty that involves compulsory prison labour under chapter 2, section 2, of the Bureau of Corrections Manual. The Committee further recalls that the Convention prohibits the imposition of compulsory labour, including compulsory prison labour, on persons participating peacefully in a strike. ***The Committee requests the Government to take the necessary measures to amend the above-mentioned provisions of the Labour Code and the Revised Penal Code so as to ensure that penalties of imprisonment (involving compulsory labour) cannot be imposed for the mere fact of persons peacefully participating in strikes. Pending the adoption of such measures, the Committee requests the Government to provide information on all court decisions issued under the above-mentioned sections of the Penal Code and the Labour Code in order to assess their application in practice, indicating in particular the facts that gave rise to the conviction, and the penalties applied.***

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

## Poland

### **Forced Labour Convention, 1930 (No. 29)** (ratification: 1958) and **Protocol of 2014** (ratification: 2017)

The Committee notes the supplementary information provided by the Government on matters raised in its previous direct request, and otherwise repeats the content of its observation adopted in 2019 which read as follows.

*Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers with regard to the exaction of forced labour*. The Committee previously noted the observations of the Independent and Self-Governing Trade Union ("Solidarnosc") that there had been exploitation of citizens of the Democratic People's Republic of Korea (DPRK) for forced labour in Poland. In 2012, there were 509 DPRK workers brought legally to Poland. Reportedly they had to send back to the regime a large part of their legitimate earnings. The Committee also noted that, according to the report of the Special Rapporteur of the United Nations on the situation of human rights in the DPRK, nationals of the DPRK were being sent abroad by their Government to work under conditions that reportedly amount to forced labour, mainly in the mining,

logging, textile and construction industries. The workers were forced to work sometimes up to 20 hours per day with only one or two rest days per month and given insufficient daily food rations. They were under constant surveillance by security personnel and their freedom of movement was unduly restricted. Workers' passports were also confiscated by the same security agents.

The Committee noted the Government's statement that, in response to the signals revealed in 2016, the National Labour Inspectorate and the Border Guards carried out monitoring activities covering all entities employing the citizens of the DPRK, and no infringements seemed to relate to forced labour. The Government further indicated that, in 2016 and 2017, no new visas had been issued to DPRK citizens. As of 1 January 2017, there were 400 citizens from DPRK in Poland with valid residence permits. The Committee also noted the Government's information that a number of violations of provisions of the Act on the Promotion of Employment, as well as regulations in the scope of Labour Law were identified, such as the indirect payment of wages and confiscation of identification papers. The Committee requested the Government to strengthen its efforts to ensure that migrant workers, especially those from the DPRK, are fully protected from abusive practices and conditions that amount to the exaction of forced labour.

The Government indicates in its report that it has ceased to issue new temporary residence permits for paid activities to the DPRK nationals. Consequently, section 100, paragraph 1, point 4 of the Act on Foreigners of 2013 and section 88(j), paragraph 2 of the Act on the Promotion of Employment and on Labour Market Institutions have been amended by the Act of 20 July 2017, and have accordingly been supplemented with the provisions providing for an additional reason for refusing temporary residence. The Government further indicates that it is currently implementing the United Nations Security Council Resolution 2397 of 22 December 2017, which allows for the return of the DPRK employees to their own country to be accelerated. The Government has already withdrawn the majority of the temporary residence permits for paid activities issued to the DPRK nationals in Poland. The Government states that, in March 2019, no more than 19 DPRK nationals resided in Poland, so that the number of the DPRK employees in Poland has dropped by approximately 95 per cent.

Furthermore, in recent years, as a result of the alleged infringements of the rights of the DPRK nationals who work in Poland and of the increasing number of foreigners employed in the territory, the frequency of inspections has been increased. The Border Guard Service has applied special monitoring to businesses employing DPRK citizens. The Government indicates that the inspections carried out did not show any indications that the DPRK nationals experienced forced labour. The Government communicates statistical data collected by the Border Guard Service, indicating that in 2018, 12,108 foreigners were found to be working illegally and 155 DPRK nationals were identified during inspections, among which 11 have been illegally employed, namely without valid residence permits or work permits, or without employment contracts or civil law contracts. From 1 January to 31 May 2019, 4,255 foreigners were found to be working illegally and 88 DPRK nationals were identified during inspections, among which 58 have been illegally employed. Additionally, the Committee notes the Government's information that labour inspectors detected a number of irregularities as a result of the inspections carried out in entities hiring foreigners, such as the failure to provide a foreigner with a contract translated into a language comprehensible to the foreigner before signature, or the failure to provide a foreigner with a copy of the work permit. The Border Guard Service also identified cases of non-payment of wages, or only partial payment thereof.

With regard to prevention measures, the Committee notes the Government's indication that the National Labour Inspectorate launched education and information campaigns, intended to raise awareness both among employers hiring foreigners regarding their obligations, and among foreigners working in Poland, regarding their rights. A hotline was made available to foreigners at the National Labour Inspectorate Consultancy Centre in February 2018, in order to increase understanding of the legislation on the employment of foreigners in Poland, in the Ukrainian and Russian languages. Over 3,400 foreigners have so far contacted the experts for advice, including Ukrainians, Belarusians, Georgians, Moldovans and Russians.

The Committee notes that, in its concluding observations of August 2019, the United Nations Committee against Torture reported that, despite the fact that a recent case was opened in Poland, involving 107 nationals of the DPRK, investigations appear to be ineffective and to lack impartiality, particularly with regard to interpreting services and formal proceedings for those investigated. ***While taking note of the measures taken by the Government, the Committee urges the Government to strengthen its efforts to prevent foreign migrants from falling victim to abusive practices and conditions that amount to the exaction of forced labour and to ensure their access to justice and remedies. The Committee also requests the Government to continue to supply information on the number of identified victims of abusive practices among migrant workers, and on the number of investigations, prosecutions and penalties imposed on the perpetrators.***

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

# Qatar

## Forced Labour Convention, 1930 (No. 29) (ratification: 1998)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government (see points (i) to (v) under the national legal framework for migrant workers, and point (i) under access to justice and law enforcement), as well as on the basis of the information at its disposal in 2019.

*COVID-19 measures.* The Committee appreciates the efforts made by the Government to provide information concerning various measures taken in 2020 in the context of the COVID-19 pandemic, including holding remote sessions of the Labour Dispute Settlement Committee to decide on urgent labour issues and claims by domestic workers; resolving complaints and labour disputes via video conferencing; ensuring that employers pay their workers' wages; and taking legal measures against companies violating the Wage Protection System.

*Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers to conditions of forced labour. Background and context.* The Committee previously noted that at the 103rd Session of the International Labour Conference (ILC) in June 2014, 12 delegates to the ILC, under article 26 of the International Labour Organisation (ILO) Constitution filed a complaint against the Government of Qatar relating to the violation of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81). It also noted the discussions which took place at the 104th Session of the Conference Committee on the Application of Standards (CAS) in June 2015, concerning the application by Qatar of the Convention. The Committee further noted that at its 331st Session (October–November 2017), the Governing Body decided to close the complaint against the Government of Qatar and support the technical cooperation programme between the Government of Qatar and the ILO and its implementation modalities. The technical cooperation programme is articulated around five pillars, including: improvement in payment of wages; enhanced labour inspection and occupational safety and health (OSH) systems; refinement of the contractual system that replaces the *kafala* system; improved labour recruitment procedures, increased prevention, protection and prosecution against forced labour; and promotion of the voice of workers.

1. *National legal framework for migrant workers.* In its previous comments, the Committee requested the Government to provide information on the following issues: (i) the functioning of the sponsorship system (*kafala*); (ii) the procedure for issuing exit visas; (iii) recruitment fees and contract substitution; (iv) passport confiscation; (v) the late payment and non-payment of wages; and (vi) migrant domestic workers.

(i) *Functioning of the sponsorship system (kafala).* In its earlier comments, the Committee noted that the recruitment of migrant workers and their employment were governed by Act No. 4 of 2009 regulating the sponsorship system. Under this system, migrant workers who have obtained a visa must have a sponsor (section 180). The law forbids workers to change employer, and the temporary transfer of the sponsorship is only possible if there is a pending lawsuit between the worker and the sponsor. The Committee also took note of Act No. 21 of 2015 which regulates the entry, exit and residence of migrant workers and which entered into force in December 2016. The Committee observed that the main new feature introduced by the Act of 2015 consisted of the fact that workers may change jobs without the employer's consent at the end of a contract of limited duration or after a period of five years if the contract is of unspecified duration (section 21(2)) without the employer's consent; whereas under the Act of 2009, the worker could not return to work in Qatar for two years in case the sponsor refused such transfer. However, it observed that the Act of 2015 did not seem to foresee termination by the expatriate worker before the expiry of the initial contract (that is with a notice period) without approval of the employer nor did it set out reasons and conditions for termination generally, other than in a few very specific cases. The Committee expressed the firm hope that new legislation would remove all the restrictions that prevent migrant workers from terminating their employment relationship in the event of abuse and would enable migrant workers to leave their employment at certain intervals or after having given reasonable notice during the duration of the contract and without the employer's permission.

Regarding the transfer of workers in abusive situations, the Committee notes that Act No. 21 of 2015 allows the Minister of Interior or its representative to approve the temporary transfer of a migrant worker to a new employer in cases involving lawsuits between a worker and his/her current employer, provided that the Ministry of Labour approves the transfer. The Committee notes the statistical information provided by the Government on the number of workers transferred to new employers from December 2016 to January 2019 which reached a total of 339,420 permanent transfers. It notes that the number of transfers based on abuse reached 2,309 in 2019. The Committee notes the Government's reference in its report to Minister of Interior Decree No. 25 of 2019 on the issuance of the executive regulations of Act No. 21 of 2015 regulating the entry, exit and residence of foreign nationals. The Committee further notes in

the annual progress reports to the Governing Body on the ILO technical cooperation programme in Qatar (annual progress report) that the programme supported the drafting of amendments to Labour Act No. 14 of 2004 and Act No. 21 of 2015 regulating the entry and exit of expatriates and their residence with regard to termination of employment and the removal of the no-objection certificate so as to eliminate restrictions on workers' freedom of movement to change jobs (GB.337/INS/5 paragraph 18). The Committee notes that amendments to Labour Act No. 14 of 2004 and Act No. 21 of 2015 to eliminate restrictions on workers' freedom of movement to change jobs were approved by the Council of Ministers in September 2019, and referred to the Shura Council for consideration.

The Committee further notes the Government's information in its supplementary report that the legislative amendments of 2020 have dismantled and abolished the *kafala* system in Qatar. The Committee notes with ***interest*** the Government's information that the provisions of Labour Act No.14 of 2004 and Act No. 21 of 2015 concerning the termination of employment contracts and change of employment by workers have been amended by Decree Law No.18 of 2020 and Decree Law No. 19 of 2020, respectively. According to Decree Law No. 18, workers may terminate the employment contract during the probation period to transfer to another employer, provided they notify their current employer, in writing, of their intent to terminate the contract at least one month before the date of termination. This requires the new employer to compensate the current employer a portion of the recruitment fees and the air ticket, provided that the amount does not exceed the equivalent of two months of the worker's basic wage. The law further permits either party to the employment contract, whether fixed-term or permanent, to terminate the employment contract after the probation period, in which case the party wishing to terminate the contract shall notify the other party in writing of their intent to terminate the contract, with a specific notice period of one or two months depending on the number of years of employment. Decree No. 19 further permits expatriate workers to change employer after notifying the Ministry of Administrative Development, Labour and Social Affairs (MADLSA) provided that their residency permit is valid or is within 90 days from the date of expiry, unless it has expired for reasons which are not within their control. The Committee further notes the Government's information that in 2018 there were 8,653 cases involving a change of employer and from September 2019 to August 2020, there were 17,843 such cases. ***Welcoming these recent legislative developments, the Committee requests the Government to continue to provide information on the number of employment transfers and termination of employment contracts that have taken place, disaggregated on the basis of contracts of limited duration and contracts of unspecified duration and on the basis of gender and types of work, following the adoption of Decree No. 18 of 2020 and Decree No.19 of 2020. The Committee also requests the Government to indicate when the new employer must compensate the old employer for recruitment and airfare costs.***

(ii) *Procedure for issuing exit visas.* The Committee previously noted that Act No. 4 of 2009 on entry and exit of foreign workers required migrant workers to obtain an exit permit signed by the sponsor in order to leave the country. It subsequently noted the adoption of Act No. 21 of 2015 on entry and exit of foreign workers which removed the obligation to have the exit permit signed by the sponsor to leave the country. Act No. 21 nevertheless provided that the employer may object to the departure from the country of the expatriate worker in which case the latter had the right to appeal to an Appeals Committee (section 7(2) and (3)). The Committee further observed that the Law did not enumerate the specific grounds on which the employer may object to the departure of the migrant worker from the country. The Committee requested the Government to take the necessary measures to remove the obstacles that limit the freedom of movement of migrant workers.

The Committee notes with ***satisfaction*** the adoption of Act No. 13 of 2018 which amends section 7 of Act No. 21 and suppresses the exit permit requirement for migrant workers covered by Labour Act No. 14 of 2004. The Committee notes, however, that this new Act specifies that employers may submit for approval to the MADLSA a list of workers for whom a "no-objection" certificate would still be required, with a justification based on the nature of their work. Positions in which exit permits may be required are limited to the following highly skilled workers: chief executive officers, finance officers, managers responsible for the oversight of the company's day-to-day operations and directors of ICT. The number of these workers per company shall not exceed 5 per cent of their workforce. As of May 2019, the number of companies that requested an exception up to a maximum of 5 per cent of the workforce was 12,430 companies, while the number of workers was 38,038. Given that Act No. 13 does not cover categories of workers outside of the scope of the Labour Act, the Committee notes that a Ministerial Decision is to be adopted before the end of 2019 to suppress the exit permit for all workers not covered by the Labour Act, notably domestic workers, workers in government and public institutions, workers employed at sea and in agriculture, as well as casual workers.

The Committee notes the Government's information in its supplementary report that Ministerial Decree No. 95 of 2019, which provides for broadening the scope of exit visas for workers who are not covered by the Labour Act and which abolishes the "no-objection" certificate requirement for workers to change their employer, has been adopted. It notes with ***satisfaction*** that Decree No. 95 of 2019 abolishes the exit permit requirement for migrants working in ministries; government bodies, public institutions

and organizations; workers in the oil and gas sector and on the maritime vessels of affiliated companies; workers in agriculture and grazing, workers in private offices, and domestic workers. These categories of workers are entitled to leave temporarily or depart the country definitively during the validity of their employment contract. In the case of domestic workers, workers have to inform the employer at least 72 hours in advance of their intent to leave.

***The Committee requests the Government to provide information on the application in practice of Ministerial Decree No. 95 of 2019, indicating the number and category of workers, disaggregated by gender and types of work, to whom exit visas are granted without requiring a "no-objection" certificate from the employer.***

(iii) *Recruitment fees and contract substitution.* The Committee previously encouraged the Government to ensure that recruitment fees are not charged to migrant workers. It also requested the Government to ensure that contracts signed in sending countries are not altered in Qatar. The Committee notes the Government's indication that amendments to section 33 of Labour Act No. 14 of 2004 provide that: "A licensee shall be prohibited from recruiting workers from abroad on behalf of third parties and from receiving any money for recruiting workers in the form of payment, recruitment fees or other costs". The Government underlines that this provision has been added to the basic contracts signed by all migrant workers in order to clarify to employers and workers that the Qatari law prohibits employers from imposing any recruitment fees. The Committee further notes that the work of recruitment agencies is regulated by Ministerial Decree No. 8 of 2005 which ensures that recruitment is carried out by licensed companies and respects all workers' rights. There are currently 349 recruitment agencies that have a valid license under this system. Moreover, Decree No. 8 holds recruitment agencies in the country responsible for selecting recruitment agencies in the country of origin that comply with the law. To this end, 36 bilateral agreements and 13 memoranda of understanding have been signed with workers' countries of origin in order to provide legal protection for them prior to their employment. According to the Government, the MADLSA follows up on the work of the labour recruitment offices acting on behalf of a third party to recruit workers and inspects them periodically or without prior notice. The Government states that in 2019, 337 inspection visits have been carried out and four warnings have been issued. In addition, from January to 17 September 2020, 414 inspections were conducted, during which 36 warnings were issued, advice and guidance was provided in seven cases, and three reports were filed.

The Committee also takes note of the establishment of the electronic contract models for migrant workers including migrant domestic workers. According to the Government, in 2018, the total number of electronic contracts approved by the MADLSA covered 389,810 workers registered in the system of electronic contract. Furthermore, the Committee notes the establishment of the Qatar Visa Centre in the labour-sending countries in which fingerprint and medical screening procedures are carried out before the worker arrives in Qatar and the contract is signed electronically. The signing of the contract electronically by a worker allows him/her to read the contract in his/her native language, giving him/her a better chance to understand the contract and negotiate its terms if he/she is not satisfied with any of the terms included therein. The Committee notes that Visa Centres were opened in six labour-sending countries – Sri Lanka, Bangladesh, Pakistan, Nepal, India and the Philippines, with future plans to open Centres in Tunisia, Kenya and Ethiopia. All the services provided by the Centres are free and performed electronically, while the cost is borne by employers and paid through a bank transfer. Additionally, the Committee notes that in line with the ILO General Principles and Operational Guidelines for Fair Recruitment, a "Fair Employment Programme" is being implemented with the Government of Bangladesh, as a pilot project in the construction sector. ***The Committee requests the Government to continue to take measures to ensure that recruitment fees are not charged to workers, and to provide information on violations detected in this regard. Considering the establishment of the electronic contract system to be an important initiative which can contribute to reducing contract substitution, the Committee requests the Government to continue to provide information on the number of workers, including domestic workers registered in the electronic contract system.***

(iv) *Passport confiscation, late payment and non-payment of wages.* The Committee notes that section 8(3) of Act No. 21 of 2015 prohibits passport confiscation and any person who violates this provision shall be sentenced to a maximum fine of 25,000 Qatari riyals (QAR) (US$6,800). According to the Government, the residency permit is now issued in a separate document and not included in passports. Ministerial Decree No. 18 of 2014 specifies the requirements and specifications of suitable accommodation for migrant workers, in a manner which enables migrant workers to keep their documents and personal belongings, including their passports. Surveys conducted in 2017 and 2018 by Qatar University's Social and Economic Survey Research Institute (SESRI) showed that passport retention became less common among entities covered by the Labour Act.

Regarding the implementation of the wage protection system (WPS), the Government indicates that the number of companies registered in the WPS was 80,913 and the percentage of workers whose salaries were transferred on time to their bank accounts increased to 92.3 per cent while the percentage of unpaid workers was at 7.7 per cent. The Committee further notes the Government's information that currently

1,660,000 workers are registered in the WPS. The Government indicates that in January 2020, the WPS unit imposed a ban on 588 companies and later, in the wake of the complete closure and restrictions due to the COVID-19 pandemic, more companies were detected in breach of the WPS and further bans were imposed on 8,756 companies. Moreover, under Decree Law No.18 of 2020, sections 144 and 145 of the Labour Act were amended to include tougher penalties for violating the WPS concerning any delay in the payment of wages or dues to the worker or failure to pay the wages to the worker before their annual leave.

The Committee notes with ***interest*** the establishment of the "Workers' Support and Insurance Fund" which aims to guarantee the payment of workers' entitlements that are determined by Labour Disputes Settlement Committees in the event of a company's insolvency and if it is unable to pay wages in order to avoid actions that may take time and affect the ability of workers to fulfil their obligations towards their families or others. The Fund also aims to facilitate the procedures for return of migrant workers, including domestic workers to their country of origin. The Fund is currently working on a pilot and partial basis, and final regulations will be adopted with a view to ensuring the Fund's full operation by the end of 2019.

The Committee further notes the Government's information that the Worker's Support and Insurance Fund formed pursuant to Ministerial Decision No. 3 of 2019 is fully operational. The Decree allocates a sum equivalent to 60 per cent of the fees collected for workers' permits to ensure diverse and adequate resources for paying the workers' dues and providing them with support. The Government indicates that since its inception, the Fund has dispersed QAR13,917,484 (USD$3,823,484) as financial relief to 5,744 workers. ***The Committee requests the Government to continue to provide information on the work done by the Workers' Support and Insurance Fund in terms of enabling migrant workers to recover their entitlements. It also requests the Government to continue to provide information on the implementation of the WPS and the application in practice of sections 144 and 145 of the Labour Act, as amended by Decree No. 18 of 2020, including the penalties applied for the delay or non-payment of wages or dues to workers.***

(v) *Migrant domestic workers.* In its previous comments, the Committee expressed the firm hope that the draft Bill on Domestic Workers will be adopted.

The Committee notes with ***interest*** the adoption of Act No. 15 of 2017 on migrant domestic workers as well as the model contract approved by the MADLSA in September 2017. It notes that migrant domestic workers shall be entitled to: a paid probationary period (section 6); a monthly wage paid at the end of the month (section 8); maximum hours of work not exceeding ten hours a day (section 12); and a paid weekly rest holiday that is not less than 24 consecutive hours (section 13). The Committee further notes that migrant domestic workers can terminate their employment contract before the end of its duration in a number of cases, including: (i) failure of the employers to meet their obligations specified in the provisions of this Act; (ii) provision of misleading information during the conclusion of the employment contract; (iii) physical violence from the employers or a member of their families; and (iv) in the event of a serious danger which threatens a worker's safety or health, provided that an employer was cognizant of the danger.

The Committee also notes the statistical information provided by the Government on the number of convictions and fines imposed on employers of female domestic workers in 2018. It notes that 16 cases of violence were reported followed by 12 convictions of an average of one month of imprisonment. The Committee further notes that from January to August 2020, a total of 159 complaints by domestic workers against employers were received, of which 55 cases were resolved, 80 cases are being processed, 22 cases have been referred to the court and two cases have been filed for further investigation. According to the Government, the MADLSA and the ILO will issue two manuals for domestic workers and employers of domestic workers, based on the projects of related organizations and the Migrant-Rights NGO. The Handbook on Domestic Workers will be printed in several languages and will provide information on the main provisions of Act No. 15 of 2017. The Handbook for Employers will be printed in Arabic and English and will also provide information based on the rights and responsibilities of employers as provided for in Act No. 15 of 2017. These manuals will be launched as part of a wider public awareness campaign on the rights and responsibilities of domestic workers and their employers in Qatar. ***The Committee requests the Government to continue to provide information on the application in practice of Act No. 15 of 2017, indicating the number and nature of complaints filed by migrant domestic workers and the outcome of such complaints, including the penalties applied.***

2. *Access to justice and law enforcement.* In its previous comments, the Committee requested the Government to provide information on: (i) access to the complaints mechanism; and (ii) monitoring mechanisms for infringements of the labour legislation and imposition of penalties.

(i) *Access to the complaints mechanism.* The Committee notes the Government's indication that access to the complaints mechanism is free of charge and the related devices are available in 11 languages. The Committee further notes the establishment of the Labour Disputes Settlement Committees (Cabinet Resolution No. 6 of 2018) mandated to take decisions within a period not exceeding three weeks in all disputes related to the provisions of the law or the work contract. According to the

Government, each worker or employer must submit, in case a dispute arises between them, the case first to the competent department of the Ministry (Labour Relations Department), which takes the necessary measures to settle the dispute amicably. The agreement is documented in the minutes of the dispute settlement meetings and has an executory force. If the dispute is not settled or the worker or employer refuse the settlement of the competent department, the dispute shall be referred to the Labour Disputes Settlement Committee. The decision of the Labour Disputes Settlement Committee may be appealed within 15 days from the issuance of the decision (if in presence of parties), or as of the day following the issuance of the decision (if its decision was in absentia), and the competent Court of Appeal shall consider the appeal rapidly, and take its decision within thirty days as of the date of its first hearing. The Committee further notes that a Protocol was agreed upon between the MADLSA and the ILO which allows workers to submit complaints using the facilitation of the ILO Office in Doha. It also notes that, based on that Protocol, the ILO has lodged 72 complaints for 1,870 workers, resulting in the conclusion of 43 cases (1,700 workers). The remaining cases are either on appeal, pending the outcome of criminal cases, or in process (GB.337/INS/5 paragraph 46). In 2018, the total number of workers submitting a complaint reached 49,894 and were mainly cases related to the late payment of wages, travel tickets, end of service bonus and leave allowance. Out of these complaints, 5,045 cases were referred to the Labour Disputes Settlement Committees and 93 cases were settled. In addition, from January 2019 to August 2020, a total of 24,351 workers submitted complaints, of which 1,810 were closed, 7,242 were referred to the Labour Disputes Settlement Committee, and 469 are under consideration. According to the Government's report, wage arrears, non-payment for overtime work and the non-reimbursement to the worker of deductions, are some of the most frequent causes of complaints by workers, in addition to the above-mentioned causes. Moreover, the Government indicates that in June 2020, the MADLSA opened an office at its headquarters to implement the rulings of the Supreme Judicial Council, and facilitate and ensure the prompt completion of judicial transactions for workers. ***The Committee encourages the Government to pursue its efforts to facilitate access of migrant workers to the Labour Disputes Settlement Committees. It requests the Government to continue providing statistical information on the number of migrant workers who have had recourse to these Committees, the number and nature of the complaints as well as their outcome.***

(ii) *Monitoring mechanisms on the infringement of labour legislation and imposition of penalties.* The Committee notes the Government's indication that the number of labour inspectors reached 270 dedicated to migrant worker-related issues. ***In this regard, the Committee refers the Government to its detailed comments under the Labour Inspection Convention, 1947 (No. 81).***

Regarding the applicable penalties, the Committee notes the Government's indication that section 322 of the Penal Code No. 11 of 2004 stipulates that: "Whoever forcibly obliges somebody to work with or without a salary shall be liable to imprisonment of a term of up to six months and a fine not exceeding QAR3,000 (US$826), or one of these two penalties". The number of criminal reports issued because of non-payment of wages during 2018, which were referred to the courts by the Office of Residence Affairs, reached 1,164 cases.

During 2015, the Human Rights Department of the Ministry of Interior received 168 complaints related to passport retention, all of which were referred to the Public Prosecution. The majority of the complaints have been investigated, and the persons found to be in violation were forced to return the passports, and several arrest warrants were issued. In addition, 232 cases of passport confiscation were referred to the Public Prosecution in 2016 and 169 cases were referred to the Public Prosecution in 2017. In 2018, two cases of passport confiscation were reported and the average fine ranging from QAR5,000 to QAR20,000 (US$1,300 to US$5,000) was imposed on the two defendants. The Committee observes, however, that the penalties imposed consist only of fines. The Committee reminds the Government that, by virtue of *Article 25* of the Convention, the exaction of forced or compulsory labour shall be punishable as a *penal* offence, and the penalties imposed by law shall be really adequate and are strictly enforced. ***Underlining once again the importance of effective and dissuasive penalties being applied in practice to those who impose forced labour practices, the Committee urges the Government to ensure that thorough investigations and prosecutions of those suspected of exploitation are carried out and that in accordance with Article 25 of the Convention, effective and dissuasive penalties are actually applied to persons who impose forced labour on migrant workers, especially the most vulnerable migrant workers. The Committee requests the Government to continue to provide information on the judicial proceedings instigated as well as the number of judgments handed down in this regard. It also requests the Government to provide concrete information on the actual penalties applied, indicating the number of cases in which fines were imposed, the number of cases in which sentences of imprisonment were imposed as well as the time served.***

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

## Republic of Moldova

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1993)

*Article 1(a) of the Convention. Sanctions for expressing political views.* The Committee previously noted that section 346 of the Criminal Code provides for sanctions of imprisonment for a term of up to three years (involving an obligation to perform labour) for "inflaming of the national, racial or religious enmity". The Committee noted that the above provision of the Criminal Code provides for penal sanctions involving compulsory labour in circumstances defined in terms which are broad enough to give rise to questions about their application in practice. The Committee requested the Government to provide information on the application in practice of the above section of the Criminal Code.

The Committee notes with ***regret*** an absence of information on this point in the Government's report. ***The Committee therefore reiterates its request to the Government to provide information on the application in practice of section 346 of the Criminal Code, with an indication of whether any court rulings have been handed down under this section, the penalties imposed and a description of the acts giving rise to such rulings.***

*Article 1(b). Mobilizing of labour for purposes of economic development.* For a number of years, the Committee has been drawing the Government's attention to the incompatibility with the Convention of certain provisions of the Act on mobilization, No. 1192-XV of 4 July 2002, the Act on the requisitioning of goods and services in the public interest, No. 1352-XV of 11 October 2002, and the Government decision to approve regulations on mobilization at the workplace, No. 751 of 24 June 2003, under which the central and local authorities, as well as military bodies can exact compulsory labour from the population under certain conditions as a means of mobilizing and using labour for purposes of the development of the national economy.

The Committee notes with ***regret*** that the Government does not provide information on any progress made in the amendment of the relevant legislation. ***The Committee, once again, firmly hope that the necessary measures will be taken to amend the above provisions of the Act on mobilization, No. 1192-XV of 4 July 2002, the Act on the requisitioning of goods and services in the public interest, No. 1352-XV of 11 October 2002, and the Government decision to approve the regulations on mobilization at the workplace, No. 751 of 24 June 2003, in order to bring them into conformity with the Convention. It further requests the Government to provide information on the progress made in this regard.***

*Article 1(c). Sanctions for violations of labour discipline.* In its previous comments, the Committee noted that, under section 329 of the Criminal Code, the non-performance or improper performance by an official of his/her duties as the result of a negligent attitude, causing substantial harm to legitimate rights and interests of persons or organizations, or to public interests, is punishable by deprivation of freedom for a term of up to three years (which involves compulsory prison labour). The Committee requested the Government to provide information on the application in practice of the above section of the Criminal Code.

The Committee notes with ***regret*** an absence of information on this point in the Government's report. ***The Committee therefore reiterates its request to the Government to provide information on the application in practice of section 329 of the Criminal Code, in order to enable it to ascertain whether this provision is not used as a means of labour discipline within the meaning of the Convention. It further requests the Government to indicate whether any court rulings have been handed down under section 329 of the Criminal Code, the penalties imposed and a description of the acts giving rise to such rulings.***

*Communication of legislation.* ***The Committee reiterates its request to the Government to communicate a copy of the regulations governing service on board seagoing vessels, to which reference is made in section 58 of the Merchant Shipping Code, as well as any other provisions governing labour discipline in merchant shipping.***

## Russian Federation

### Forced Labour Convention, 1930 (No. 29) (ratification: 1956) and Protocol of 2014 (ratification: 2019)

The Committee notes the observations of the Confederation of Labour of Russia (KTR), received on 30 September 2019.

*Articles 1(2) and 2(1) of the Convention. Vulnerable situation of migrant workers to the exaction of forced labour.* The Committee notes that, according to the observations of the Confederation of Labour of Russia, migrant workers are at increased risk of falling into forced labour. For example, forced labour practices occurred in grocery stores in a district of Moscow, with victims from Uzbekistan, Kazakhstan and Tajikistan, mostly women, who were subjected not only to labour exploitation but also to sexual exploitation and abuse. The KTR indicates that no action has been taken by law enforcement agencies to put an end to such practices. As a result, two victims filed a complaint with the European Court of Human

Rights in 2016. ***The Committee requests the Government to respond to the observations of the KTR in this regard.***

*Article 2(2)(c). Prison labour.* In its earlier comments, the Committee noted that section 103 of the Code on the Execution of Penal Sentences provides that convicted persons are under an obligation to perform labour, such labour being exacted from them by the administration of penitentiary institutions at enterprises of such institutions, at state enterprises, or at enterprises of other forms of ownership. The Committee also noted that pursuant to section 21 of Act No. 5473-I (21 July 1993) on the institutions and bodies for the execution of penal sentences involving deprivation of freedom, compulsory labour may be exacted from convicted prisoners at enterprises of any organizational or legal form, even if such enterprises do not belong to the system of the execution of penal sentences and are located outside of penitentiary institutions. In the latter case, compulsory labour will be exacted on the basis of a contract concluded between the administration of penitentiary institutions and the enterprises concerned. Regarding the conditions of work of convicted prisoners, the Committee noted that, under sections 103–105 of the Code on the Execution of Penal Sentences, their hours of work and rest periods, occupational safety and health, as well as remuneration are governed by the general labour legislation. In this regard, the Committee observed that while prisoners' conditions of work may therefore be considered as approximating those of a free labour relationship, the legislation does not require the free, informed and formal consent of prisoners to work for private enterprises.

The Committee notes that, according to the observations of the KTR, recent changes in Russian legislation, introduced by Federal Act No. 179-FZ of 18 July 2019 on amendments to the Penal Enforcement Code of the Russian Federation, allow the establishment of branches of correctional centres at enterprises and large construction sites. The Committee notes the absence, in the Government's report, of new information regarding the consent of prisoners to work for private enterprises. It once again recalls that *Article 2(2)(c)* of the Convention strictly prohibits prisoners from being hired to or placed at the disposal of private enterprises. The work of prisoners for private companies is only compatible with the Convention where it does not involve compulsory labour, which requires the formal, freely given and informed consent of the persons concerned. ***Noting that the legislation allows work to be carried out by prisoners for private enterprises, the Committee requests the Government to take the necessary measures to ensure that this work is only permitted with the voluntary consent of the prisoners concerned, such consent being formal, informed and free from the menace of any penalty, including the loss of rights or privileges. The Committee requests the Government to provide information on the number of prisoners working for private enterprises and the nature of those enterprises, as well as on the procedures established to obtain their free and informed consent to undertake such work. It also requests the Government to provide information on the measures taken or envisaged in this regard.***

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

## Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1998)

The Committee notes the observations of the Confederation of Labour of Russia (KTR) received on 30 September 2019.

*Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political or ideological views.* 1. *Act of 24 July 2007 on combating extremism.* In its previous comments, the Committee noted the adoption of the Act of 24 July 2007 to amend certain legal acts with a view to increasing liability for "extremist activities", which includes acts based on racial, national or religious hatred or enmity. It noted that under sections 280, 282.1 and 282.2 of the Penal Code, the following acts are punishable with sanctions involving compulsory labour: public appeal to perform extremist activities; establishment of an extremist group or organization; and participation in such a group or organization prohibited by a court decision. The Government stated that, in imposing punishment, the court shall take into consideration the nature or degree or social danger of the crime and the personality of the convict, including any mitigating or aggravating circumstances, and also the influence of the imposed penalty on the rehabilitation of the convicted person. Moreover, the list of penalties established under section 280 allows courts to impose alternative penalties to deprivation of liberty, such as fines. The Government further indicated that most penalties imposed were fines and that deprivation of liberty only concerned four persons. However, the United Nations Human Rights Committee expressed concern that the vague and open-ended definition of "extremist activity" in the Federal Act on combating extremist activity does not require an element of violence or hatred to be present and that no clear and precise criteria on how materials may be classified as extremist are provided in the Act.

The Committee notes that, according to the observations of the KTR, the definition of "extremism" provided for by section 1 of Federal Act No. 114-FZ is so broad that public expression of political views as well as ideological beliefs opposite to the established political, social or economic system may also fall under this definition.

The Committee notes the Government's repeated indication that Federal Act No. 114-FZ, which enshrines the concepts of "extremist activities", "extremist organizations" and "extremist materials",

determines the targets of action to combat extremist activities and governs procedures for preventing extremism. The Government also refers to Federal Act No. 519-FZ of 27 December 2018 on amendments to section 282 of the Penal Code (incitation of hatred or enmity and abasement of human dignity), according to which, only persons who have already incurred administrative liability for a similar act within one year are criminally punishable. The Government indicates that the Plenum of the Supreme Court, in paragraph 7 of its Decision No. 11 of 28 June 2011 on judicial practice in criminal cases on offences of an extremist nature, states that the phrase "acts intended to incite hatred or enmity" should be understood as, in particular, statements that justify and/or affirm the need for genocide, mass repressions, deportations and the commission of other unlawful acts, including the use of violence against representatives of any nation or race, or followers of any religion. Criticism of political organizations, ideological or religious associations, political, ideological or religious beliefs, national or religious customs in and of itself must not be considered acts intended to incite hatred or enmity. Moreover, according to statistical information from the judicial department of the Supreme Court, since 2017, the deprivation of liberty has been applied twice to persons convicted under section 280.2 of the Penal Code. Under section 280, the punishments imposed were primarily in the form of a fine. ***The Committee requests the Government to continue to ensure that no sentence entailing compulsory labour can be imposed on persons, who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It also requests the Government to continue to provide information on the application of the laws on extremism in practice, including on any prosecutions and sentences pursuant to sections 280, 282.1 and 282.2 of the Penal Code and the Act of 2007 on combating extremism.***

2. *Federal Act No. 65-FZ of 8 June 2012 amending Federal Act No. 54 FZ of 9 June 2004 on assemblies, meetings, demonstrations, marches and picketing and the Code on Administrative Offences.* The Committee previously noted the restrictions introduced in Federal Act No. 65-FZ of 8 June 2012 (Assemblies Act) amending Federal Act No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing and the Code on Administrative Offences. As amended, section 20.2 of the Code on Administrative Offences establishes a penalty of community work for a period of up to 50 hours for the organizing or holding of a public event without submitting notice thereof under the established procedures. Section 20.18 establishes administrative arrest for a term up to 15 years for the organization of the blocking, as well as active participation in the blocking, of transport lines. The Committee also noted that the HRC expressed concern about consistent reports of arbitrary restrictions on the exercise of freedom of peaceful assembly, including arbitrary detentions and prison sentences for the expression of political views. The HRC was further concerned about the strong deterrent effect on the right to peaceful assembly of these new restrictions introduced in the Assemblies Act. In this regard, the Committee also noted the comments made by the European Commission for Democracy through Law (Venice Commission) on this matter in 2013.

The Committee notes with ***regret*** the absence of information in the Government's report. ***The Committee once again requests the Government to specify the manner in which the sentenced person consents to community work. It also once again requests the Government to provide information on the application in practice of sections 20.2 and 20.18 of the Code on Administrative Offences, indicating the number of prosecutions, sanctions imposed and grounds for prosecution.***

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

## Rwanda

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 1(a) of the Convention. Prison sentences involving compulsory labour imposed as a punishment for expressing political views.* The Committee previously noted that, according to section 50(8) of Law No. 34/2010 of 12 November 2010 on the establishment, functioning and organization of Rwanda Correctional Service, an incarcerated person has the main obligation, inter alia, to perform activities for the development of the country, himself/herself and the prison. The Committee further took note of the Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association who conducted an official visit to Rwanda in January 2014 (A/HRC/26/29/Add.2). The Special Rapporteur noted with concern the Government's prevailing hostility towards peaceful initiatives by its critics and the existence of a legal framework that silences dissent. In this regard, the Special Rapporteur referred to several provisions of the Penal Code which provide for sanctions of imprisonment for persons expressing political views (sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code). Noting that any reference made to compulsory prison labour had been removed from the Penal Code, the Committee requested the Government to provide information on the measures taken in order to harmonize the Code of Penal Procedure with the Penal Code. The Committee also requested the Government to provide a copy of the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners.

The Committee notes the Government's information in its report that Law No. 30/2013 of 24 May 2013 relating to the Code of Penal Procedure has removed the reference to compulsory prison labour. However, the

Committee notes that section 50(8) of Law No. 34/2010 remains valid, under which an incarcerated person can be obliged to work for the development of the country, himself/herself and the prison. The Government also considers sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code as compatible with the Convention without providing further explanation, and indicates that there are no court decisions in this regard. However, the Committee notes that the UN Human Rights Committee expressed its concern in its concluding observations on the fourth periodic report of Rwanda of 2 May 2016, at the prosecution of opposition politicians, journalists and human rights defenders as a means of discouraging them from freely expressing their opinions (CCPR/C/RWA/CO/4, paragraphs 39 and 40).

The Committee once again recalls that *Article 1(a)* of the Convention prohibits the use of compulsory labour, including compulsory prison labour, as a punishment for peacefully holding or expressing political views or views ideologically opposed to the established political, social or economic system. It once again draws the attention of the Government to the fact that the above-mentioned sections of the Penal Code are worded in terms broad enough to lend themselves to the application as a means of punishment for peacefully expressing political views and, in so far as they are enforceable with sanctions of imprisonment which involve compulsory labour, they may fall within the scope of the Convention. The Committee further notes that the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners is not attached as indicated in the Government's report. ***The Committee therefore requests the Government to ensure that no penal sanctions involving compulsory prison labour may be imposed on persons for peacefully expressing political views, for example, by amending section 50(8) of Law No. 34/2010 following the adoption of Law No. 30/2013. The Committee also requests the Government to provide information on the application of sections 116, 136, 451, 462, 463, 468 and 469 of the Penal Code in practice, including any legal proceedings defining or illustrating their scope. The Committee finally once again requests the Government to provide a copy of the draft Ministerial Order on the nature of income-generating activities which can be performed by prisoners.***

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

## Saudi Arabia

### Forced Labour Convention, 1930 (No. 29) (ratification: 1978)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant workers to the exaction of forced labour.* 1. *Migrant workers.* The Committee previously noted the observations of the International Trade Union Confederation (ITUC) that many migrant workers in the construction industry were subject to forced labour practices such as delayed payment of wages, passport confiscation and contract substitution. The Committee requested the Government to take the necessary measures to enable migrant workers to approach the competent authorities and seek redress; provide statistical information on the number of violations of the working conditions of migrant workers, and to indicate the penalties applied for such violations. It also requested the Government to indicate the measures taken to ensure that migrant workers who are victims of abuse receive appropriate assistance.

The Committee notes the Government's reference in its report to a number of implementing Regulations of the Labour Code that cover all workers, whether national or foreign workers. These include Regulation No. 70273 of 20 December 2018, which provides that the employer shall not retain the passport, residence permit or medical insurance card of a non-Saudi Arabian worker (section 6). Moreover, Decision No. 178743 of 31 May 2019, provides that an employer who forces a worker to work shall be liable to a fine of 15,000 Saudi riyals (SAR) (US$4,000) for each worker concerned. An employer who retains the passport, residence permit or health insurance card of a worker and members of his family shall be liable to a fine of SAR5,000 (US$1,300) for each worker concerned. Lastly, Decision No. 156309 of 24 April 2019 on the Contract Registration Programme enables employers to access and update information on the employment contracts of private sector workers. This programme also allows workers to check the data in their contracts via the online services of the Social Insurance institution, which requires establishments to implement Decision No. 156309 in accordance with a specific schedule determined by the size of the establishment. Regarding the measures taken to enable migrant workers to approach the competent authorities, the Government also indicates that the Ministry of Labour set-up a hotline for labour issues, launched a labour advisory service, and established departments for the amicable settlement of labour disputes in labour offices to receive complaints as a procedure prior to filing a labour claim. The hotline responded to 1,601,258 communications in 2018. According to the Government, the Public Security agencies are the bodies in charge of receiving complaints and reports of offences. Moreover, the Public Prosecutor is competent to investigate offences and to decide whether to institute proceedings or close a case in accordance with the regulations and to bring prosecutions before the judicial authorities in accordance with the regulations, within the scope of its competence. The Committee further notes the Government's supplementary information that support and protection departments and units, established within the Ministry of Human Resources and Social Development in different regions of

the country, are responsible for monitoring recruitment agencies, providing services to workers, and receiving complaints from workers and embassies.

The Government also refers to a number of regulatory adjustments, including the insertion of new sections Nos 234 and 235 to the Labour Code providing for procedures for the expeditious settlement of labour disputes. The Committee notes that the total number of violations recorded during the first quarter of 2019 was 85,538, including 12,585 cases of failure by the employer to provide health care and treatment, 4,625 cases of workers being employed without a written employment contract, and 812 cases of non-payment of wages. For cases of non-payment of wages a fine was applied ranging from SAR10,000 to SAR5,000 (US$2,600–1,300). The Government adds that from 30 August 2019 to 30 June 2020, 57,337 violations were detected, including 11,217 cases of failure by the employer to provide health care and treatment, 6,676 cases of non-payment or late payment of wages or payment in a currency other than the official currency and 2,100 cases of workers being employed without a written employment contract. The Government finally states that 12 shelters have been established, providing psychological, legal and labour-related services to beneficiaries, staffed by 120 employees including psychologists. With regard to medical services, public sector workers are covered under the mandatory health insurance system. ***The Committee urges the Government to continue to strengthen its legal and institutional framework to ensure that, in practice, migrant workers are not exposed to practices that might increase their vulnerability to practices amounting to forced labour, including passport retention and non-payment of wages. The Committee also requests the Government to strengthen the capacity of the labour inspectors and law enforcement bodies to allow better identification and monitoring of the working conditions of migrant workers, and to ensure that penalties are effectively applied for any violations detected. It further requests the Government to continue to provide statistical information on the number and nature of violations of the working conditions of migrant workers that have been recently detected and registered by the labour inspectors, and to indicate the penalties applied for such violations, including in the event of abusive practices by recruitment agencies. Lastly, the Committee requests the Government to continue providing information on the measures taken to ensure that migrant workers who are victims of abuse receive psychological, social, medical and legal assistance as well as the number of persons benefiting from this assistance.***

2. *Migrant domestic workers.* The Committee previously noted the ITUC's observations that, although covered by Ministerial Decision No. 310 of 2013, migrant domestic workers do not enjoy the same rights as other workers in Saudi Arabia. For example, daily working time is 15 hours under the Regulation, whereas working time for other workers is limited to eight hours per day. The Committee urged the Government to take the necessary measures, in law and in practice, to ensure that migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour.

The Committee notes the Government's indication that Ministerial Decision No. 61842 of 2017 on the Unified Employment Contract, requires the employer: (i) to issue a salary slip for domestic workers and persons of similar status for every domestic worker through the banks offering this service; (ii) to register the employment contract of domestic workers and persons of similar status electronically through *Musaned*, the platform for domestic workers. The Committee further notes the Government's supplementary information that Ministerial Decision No. 172489 provides for the adoption of a contract to regulate and strengthen the contractual relationship between recruitment agencies and their employer clients when recruiting domestic workers through the *Musaned* system. In addition, the Government indicates that recruitment agencies shall be responsible for receiving and sheltering women domestic workers and providing them with high quality professional shelter services.

Moreover, two domestic labour dispute settlement committees have been established in the Riyadh shelter to provide legal and labour-related services. In 2018, the committees for the settlement of domestic workers' disputes completed 21,409 cases (labour cases) filed by domestic workers and 439 domestic workers were transferred to the shelter in Riyadh. With regard to medical services, the Government further states that domestic workers are treated free of charge in public hospitals.

The Committee further notes that in its 2018 concluding observations the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern about the situation of migrant domestic workers who continue to be subjected to economic and physical abuse and exploitation, the confiscation of passports by employers and the de facto persistence of the *kafala* system, which further increases their risk of exploitation and makes it difficult for them to change employers, even in cases of abuse (CEDAW/C/SAU/CO/3–4, paragraph 37). ***The Committee urges the Government to strengthen the measures taken above to ensure that in practice, migrant domestic workers can approach the competent authorities and seek redress in the event of a violation of their rights or abuses, without fear of retaliation. In this regard, please provide statistical information on the number of migrant domestic workers who had recourse to complaints mechanisms and the results achieved. Lastly, the Committee requests the Government to provide statistical information on the number of migrant domestic workers who have received assistance in the case of abusive working conditions.***

3. *Sponsorship system (kafala).* The Committee previously noted the ITUC's observations that migrant workers have to obtain permission from their employers/sponsors to transfer employer as well as an exit visa to leave the country. The Committee requested the Government to provide information on the conditions and the length of the procedure for changing an employer, and to provide statistical information on the number of transfers that have occurred recently.

The Committee notes once again the Government's indication that Chapter 3 of the Labour Code specifies the circumstances in which the employment contract may be terminated and the conditions relating to periods of notice and compensation in the event that one of the parties wishes to terminate the contract. It also specifies the circumstances under which workers are entitled to leave their jobs without notice while retaining their full statutory rights. Section 14 of the implementing regulations of the Labour Code promulgated in Ministerial Decision No. 70273 of 20 December 2018, provide that migrant workers may terminate the contract with the employer and work for another employer. In addition, migrant workers may terminate the contract on condition that the workers give the employer 60 days' notice in advance of the expiration date that they do not wish to renew the contract and, also, to state whether they wish to remain in the country and transfer to another employer or leave the country definitively. All services relating to a change of employer are carried out electronically. With regard to migrant domestic workers, the Committee notes that they are covered by Regulation No. 310 of 2014 and the Standard Employment Contract. Migrant domestic workers may terminate the employment contract by giving a written notice of 30 days. Moreover, under Ministerial Decision No. 605 of 12 February 2017, on the procedures for the transfer of migrant domestic workers, migrant domestic workers may transfer to a new employer without the employer's consent for a number of reasons, including for non-payment of wages for three consecutive or isolated months. Lastly, the Committee notes the Government's indication that the entry and exit of non-nationals to and from Saudi Arabia is governed by the Residence Act and the procedures contained therein.

While noting that Ministerial Decision No. 70273 of 20 December 2018 and Ministerial Decision No. 605 of 12 February 2017 allow migrant workers and migrant domestic workers respectively to transfer to another employer provided a notice period is given, the Committee observes that both are obliged to obtain permission from the employer/sponsor to leave the country (pursuant to Saudi Arabian Residence Regulations, Act No. 17/2/25/1337 of June 1959). The Committee recalls that by restricting the possibility for migrant workers to leave the country, victims of abusive practices are prevented from freeing themselves from such situations. However, the Committee notes of the Government's indication in its supplementary information that procedures to regulate and facilitate the granting of visas to workers to enable them to leave the country without the agreement of the employer have been adopted. ***The Committee requests the Government to communicate a copy of the text regulating the procedures that have been adopted to facilitate migrant workers to leave the country when they have not obtained the agreement of the employer/sponsor, and to specify the criteria on the grounds of which the employer may object to a worker's departure from the country. The Committee requests the Government to provide statistical information on the number of employee departures from the country without an exit visa. The Committee further requests the Government to provide information on the conditions and the duration of the procedure for changing an employer under the sponsorship system, and to provide statistical information on the number of transfers that have occurred since the entry into force of Ministerial Decisions Nos 70273 and 605, disaggregated by gender, occupation and country of origin of workers.***

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

## Serbia

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2003)

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. Public Assembly Act.* The Committee previously noted that section 15 of Public Assembly Act No. 51/92 provided for penalties of imprisonment for a maximum of 60 days on organizers of a public assembly who did not take the measures to maintain order in the assembly, who did not submit an application to the Ministry of Interior at least 48 hours prior to the scheduled beginning of the assembly, or who held an assembly regardless of a ban issued under the Act. The Committee noted that provisions requiring the granting of prior authorization for meetings and assemblies at the discretion of the authorities, where violations can be punished by sanctions of imprisonment involving compulsory labour, are not compatible with the Convention.

The Committee notes with ***satisfaction*** the adoption of Act No. 6 on public gatherings on 26 January 2016 which only provides for fines and not for penalties of imprisonment in sections 20-22 within applicable penal sanctions. The Committee also notes that Public Assembly Act No. 51/92 was repealed by the Decision of the Constitutional Court of the Republic of Serbia No. IUz-204/2013 on 23 October 2015.

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

## Seychelles

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1978)

*Article 1(c) of the Convention. Disciplinary measures applicable to seafarers.* In its previous comments, the Committee firmly hoped that section 153 of the Merchant Shipping Act as amended in 2015, would be reviewed in light of the Convention, with a view to ensuring that no sanction involving an obligation to perform work may be imposed as a disciplinary measure applicable to seafarers. The Committee notes that the Merchant Shipping Act has been amended by the Merchant Shipping (Amendment) Act, 2019 (Act 3 of 2020). The Committee notes with ***satisfaction*** that the penalties established for the infringement of section 153 (persistent and wilful neglect of duty, disobedience of lawful commands or impeding of the navigation of the ship) are now limited to fines.

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

## Sierra Leone

### Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1(1) and 2(1) of the Convention. Compulsory agricultural work.* For many years, the Committee has been referring to section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on "natives". On numerous occasions, the Government indicated that this legislation would be amended. The Government also indicated that section 8(h) of the Act was not applied in practice and, as it was not in conformity with article 9 of the Constitution, it was unenforceable.

The Committee notes the Government's statement that, at the time of ratification, chiefs with administrative authority requested forced or communal labour from their communities, but that measures have been taken to address these occurrences, including through the establishment of the Human Rights Commission of Sierra Leone. Nonetheless, the Government states that, despite the prohibition on forced or compulsory labour, minor violations do occur. In this regard, the Government indicates that a report was filed with the Human Rights Commission relating to the undertaking of communal work by a village. ***Noting that the Government had previously indicated its intention to amend this Act, the Committee urges the Government to take the necessary measures to repeal section 8(h) of the Chiefdom Councils Act, to bring it into conformity with the Convention. It requests the Government to continue to provide information on the application of this Act in practice with regard to the exaction of compulsory labour, including information on the reports filed in this respect with the Human Rights Commission.***

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

## South Africa

### Forced Labour Convention, 1930 (No. 29) (ratification: 1997)

*Articles 1(1) and 2(1) of the Convention. Trafficking in Persons*. In its previous comments, the Committee took note of the Prevention and Combating of Trafficking in Persons Act (PCTP Act) of 2013, which prohibits trafficking in persons and related activities, and provides for the protection of victims of trafficking. The PCTP Act also provides for the adoption of a National Policy Framework. The Committee further noted that the National Prosecuting Authority (NPA) was at the advanced stages of finalizing and issuing the directives for the implementation of the PCTP Act. In addition, prosecutors had undertaken training since 2013 on trafficking in persons and related matters. The Committee requested the Government to pursue its efforts to prevent, suppress and combat trafficking in persons.

The Government indicates in its report that it launched the Prevention and Combating of Trafficking in Persons National Policy Framework (NPF) on 25 April 2019, to promote a cooperative and aligned response to trafficking among all government departments and with civil society organizations engaged in assisting and supporting victims of trafficking. The NPF intends to support the implementation of the PCTP Act. Its strategic objectives are to: prevent trafficking in persons, including through awareness-raising and reducing vulnerability to trafficking and re-trafficking; establish a coordinated and cooperative institutional framework to combat trafficking; establish an adequate regulatory framework to combat trafficking; secure resources; and identify potential and presumed victims of trafficking and provide them with comprehensive assistance.

The Committee notes that the NPF contains a national anti-trafficking strategy, which outlines the strategic goals and specific objectives to be achieved to facilitate a comprehensive implementation of the PCTP Act, as well as a national anti-trafficking action plan, detailing how to achieve these goals and objectives.

In its report under the Worst Forms of Child labour Convention, 1999 (No. 182), the Government indicates the establishment of the National Inter-Sectorial Committee on trafficking in persons, consisting of national departmental representatives, the NPA and civil society organizations, which leads the

implementation and administration of the PCTP Act at the national level. The Government also indicates in its report under Convention No. 182 that provincial trafficking in persons task teams and provincial rapid response teams were established to deal with and monitor complaints and, pending cases of trafficking in persons, and to provide support to victims.

The Government further indicates, in its report under the present Convention, that South Africa is a primary destination for trafficking in persons in the Southern African region and within Africa at large, and a country of origin and transit for trafficking in persons to Europe and North America. Men and women are trafficked for the purposes of labour and sexual exploitation. The Government reports that foreign male victims of forced labour have been detected on fishing vessels in South African territorial waters. It states that trafficking in persons is rooted in South Africa's landscape due to the country's deep structural inequalities and that a cultural shift and a systemic response are needed in this regard, including to detect suspicions of corruption.

The Committee notes the information from the United Nations Office on Drugs and Crime (UNODC) Regional Office for Southern Africa, according to which there is a limited number of shelters for male victims of trafficking in persons in South Africa.

The Committee notes that, although two regulations were adopted in August and October 2015 under sections 43(1)(a) and 43(3) of the PCTP Act, it does not appear that regulations envisaged under section 43(1)(b) and 43(2) of the PCTP Act were formulated and adopted. It notes that regulations under section 43(1)(a) of the PCTP Act relate to the creation of a mechanism to facilitate the implementation of the Act. Regulations under section 43(2) concern the recovery and reflection period for foreign victims of trafficking and their repatriation in their country of origin. ***Noting the efforts made to combat trafficking in persons, the Committee strongly encourages the Government to continue to take measures in this regard, especially in light of the prevalence of the phenomenon in the country. It requests it to provide information on the implementation and results of the national Policy Framework on prevention and combating of trafficking in persons, including in the areas of prevention of trafficking and identification of victims. It further requests the Government to provide information on the activities of the National Inter-Sectorial Committee on trafficking in persons, as well as of the provincial trafficking in persons task teams and provincial rapid response teams, and on the impact of these activities on the reduction of trafficking in persons. It also requests the Government to indicate the assistance and protection services provided to victims of trafficking, as well as the number of victims that have benefited from such services. Lastly, the Committee requests the Government to provide information on any regulations made under sections 43(1)(b) and 43(2) of the PCTP Ac, and, where possible, to provide a copy of them.***

*Article 25. Penal sanctions.* The Committee previously noted that section 13(a) of the PCTP Act provides that a person convicted of trafficking is liable to a fine *or* imprisonment, up to life imprisonment. It observed that persons convicted of trafficking in persons might be punished only with a fine. The Committee accordingly requested the Government to provide information on the application of the PCTP Act, in particular on the specific penalties imposed on persons under section 13(a).

The Committee notes the absence of information in the Government's report in this respect. It notes the 2018/2019 Annual Report of the South African police service, which indicates that between 1 April 2018 and 31 March 2019, a total of 448 victims of trafficking in persons were rescued (page 214). Referring to its 2012 General Survey on the fundamental Conventions, the Committee recalls that the possibility of imposing only a fine on a person committing the offence of trafficking in persons does not constitute a sufficiently effective penalty, in light of the seriousness of the violation and the dissuasive character that the sanction should have (paragraph 319). ***The Committee urges the Government to take the necessary measures to ensure thorough investigations and prosecutions of the perpetrators of the above-mentioned cases of trafficking in persons that have been uncovered by the South African police service, and to provide information on any convictions and penalties imposed on these perpetrators. It once again requests the Government to supply information on the application in practice of the provisions of the PCTP Act regarding trafficking in persons, including the number of persons convicted, as well as the number and nature of penalties imposed.***

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

## Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

*Article 1(c) of the Convention. Disciplinary measures applicable to seafarers*. In its previous comments, the Committee noted that certain provisions of the Merchant Shipping Act of 1951 were incompatible with *Article 1(c)* of the Convention. In particular, it noted that sections 321, 322 and 180(2)(b) provided for the forcible conveyance of seafarers on board ship to perform their duties. It also noted that, pursuant to section 313, penalties of imprisonment (during which prison labour may be imposed, according to section 37(1)(b) of the Correctional Services Act, 1998) might be imposed for breaches of discipline by seafarers, including: wilfully disobeying any lawful command or neglecting duty; combining with any of the crew to disobey lawful commands, neglect duty, impede the navigation of the ship or retard the progress of the voyage; preventing, hindering or retarding the loading, unloading or departure of the ship; desertion; and

absence without leave. The Committee noted, with concern, that the Merchant Shipping Amendment Act, 2015, did not amend any of the above-mentioned provisions, and expressed the firm hope that the Merchant Shipping Act of 1951 would be reviewed, to be in conformity with *Article 1(c)* of the Convention.

The Committee notes that the Government's report does not provide any information on this point. The Committee takes note of the Merchant Shipping Bill, 2020, which was published for public comments in Government Gazette No. 43073 of 6 March 2020. The Committee observes that sections 397, 398 and 142(3) of the Merchant Shipping Bill, 2020, reproduce, in the same terms, sections 321, 322 and 180(2)(b) of the Merchant Shipping Act of 1951, on the forcible conveyance of seafarers on board ship. The Committee also notes that, according to section 372 of the Bill, penalties of imprisonment (during which prison labour may be imposed) may still be imposed for breaches of discipline by seafarers, including wilfully disobeying any lawful command or neglecting duty (section 134(2)(b) and (c)); combining with any of the crew to disobey lawful commands, neglect duty, impede the navigation of the ship or retard the progress of the voyage (section 134(2)(d)); preventing, hindering or retarding the loading, unloading or departure of the ship (section 134(2)(f)); desertion (section 138(1) and (2)); and absence without leave (section 139 (1) and (2)). The Committee is therefore bound to note with ***deep concern*** that the Merchant Shipping Bill, 2020, contains the same provisions as the Merchant Shipping Act of 1951, affecting the application of the Convention, despite repeated comments by the Committee since 2004. The Committee wishes to recall that *Article 1(c)* of the Convention expressly prohibits the use of any form of forced or compulsory labour as a means of labour discipline, covering both the due performance of a worker's service under compulsion of law (in form of physical constraint or the menace of a penalty), and sanctions for breaches of labour discipline (such as disobedience, desertion or absence without leave) involving an obligation to perform labour. Only sanctions relating to acts that are likely to endanger the safety of the ship, or the life or health of persons (such as provided for in section 134(1) of the Merchant Shipping Bill, 2020), are excluded from the scope of application of the Convention. ***The Committee expresses the firm hope that the Government will take into account the Committee's comments to review the Merchant Shipping Bill, 2020, with a view to bringing it into conformity with the Convention. In this regard, it urges the Government to ensure that breaches of discipline, especially those provided for in section 134(2)(b), (c), (d) and (f), section 138(1) and (2) and section 139(1) and (2) of the Merchant Shipping Bill, are not punishable with penalties of imprisonment involving compulsory labour, where the ship or the life or health of persons are not endangered. It also urges the Government to repeal sections 397, 398 and 142(3), which allow for the forcible return of seafarers on board ship to perform their duties, or to restrict their application to situations where the ship or the life or health of persons are endangered.***

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

## Sudan

### Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

*Articles 1(1), 2(1) and 25 of the Convention. Abductions for the exaction of forced labour and penalties.* In its previous comments, the Committee noted the practice of abductions for the purpose of forced labour in the context of armed conflict. It noted the Government's indication in its last report that no evidence had been found regarding cases of abductions. The Committee further noted the United Nations Independent Expert's indication in 2016 that fighting continued, particularly in Darfur between Government forces and the Sudan Liberation Movement-Abdul Wahid, causing killings, abductions, sexual violence and displacement of civilians. The Committee noted the appointment of a Special Prosecutor for Darfur crimes, and the Government's information that no prosecutions undertaken by the Special Prosecutor were related to cases of abductions for forced labour. The Committee accordingly requested the Government to take immediate and effective measures to ensure the imposition of appropriate criminal penalties on perpetrators of abductions for the exaction of forced labour.

The Government indicates in its report that there are no records of abductions for the purpose of compulsory labour, and that the Special Prosecutor for Darfur crimes has not received any cases of abductions for forced labour. The Government states that the security situation in Darfur is stable thanks to the efforts of the transitional Government, which has made peace its priority.

The Committee notes the United Nation's indication available on its website that a transitional Government was formed in August 2019 by the Transitional Military Council and the country's main opposition alliance, for a three-year period leading up to democratic elections. The Committee notes that the General Framework for the programme of the transitional Government sets as one of its priorities to put an end to the war and build fair, comprehensive and sustainable peace. In this regard, practical measures include: (i) establishing and activating the Transitional Justice Commission and building the relevant compensation and reparation institutions; and (ii) creating units for psychological support and assistance for the victims of violations. In addition, the Committee notes that Article 6(3) of the Transitional Constitution, signed on 17 August 2019, provides that despite any provision in existing laws, there shall be no statutory limitations on war crimes and crimes against humanity, extrajudicial killings, violations of

international human rights law and international humanitarian law, and offences relating to corruption and abuse of power committed since 30 June 1989. The Committee welcomes the formal signature of a peace agreement on 3 October 2020 in Sudan between the transitional Government and opposition groups. ***The Committee requests the Government to continue to take measures to ensure that no cases of abductions for the exaction of forced labour occur in future and to guarantee that victims are fully protected from such practices. The Committee also requests the Government to provide information on the establishment of the Transitional Justice Commission, the compensation and reparation institutions and the units to support and assist victims of violations, and to indicate the activities that they have undertaken for the reparation and reintegration of victims of abductions for the exaction of forced labour.***

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

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1970)

*Article 1(a) of the Convention. Punishment for expressing political views or views ideologically opposed to the established political, social or economic system*. The Committee previously noted that sections 50, 66 and 69 of the Criminal Act provided for penalties of imprisonment, which might involve an obligation to perform prison labour, for committing an act with the intention of undermining the constitutional system, for the publication of false news with the intention of harming the prestige of the State, and for committing an act intended to disturb public peace and tranquillity. It took note of the report of 2016 of the Independent Expert on the situation of human rights in the Sudan according to which repressive measures, including arrests and detentions, had been used by Sudanese authorities against political opposition groups, civil society organizations and students. The Committee accordingly urged the Government to take the necessary measures to ensure that sections 50, 66 and 69 of the Criminal Act were repealed or amended so that no prison sentence involving compulsory labour could be imposed on persons who, without using or advocating violence, expressed certain political views or opposition to the established political, social or economic system.

The Government indicates in its report that the Criminal Act is currently subject to review. The Committee notes that the Criminal Act was amended by the Act on various amendments of 13 July 2020. The Committee notes with ***regret*** that sections 50, 66 and 69 do not appear to have been amended.

The Committee further notes that the Human Rights Committee indicated in its concluding observations of November 2018 that the 2013 amendments to the Armed Forces Act introduced the possibility for the trial of civilians before military jurisdictions for crimes such as the spreading of false news (section 66 of the Criminal Act) or undermining the constitutional system (section 50 of the Criminal Act). The Human Rights Committee also pointed out that political opponents have been prosecuted before military jurisdictions (CCPR/C/SDN/CO/5, paragraph 39). ***The Committee urges the Government to take the necessary measures to ensure that the legislation is amended without delay so that persons who peacefully express political views or views ideologically opposed to the established political, social or economic system cannot be subject to sanctions involving compulsory prison labour. For instance, the Government could restrict the scope of application of sections 50, 66 and 69 of the Criminal Act to situations of violence, or could repeal sanctions involving compulsory prison labour. In the meantime, the Committee requests the Government to indicate the specific penalties that have been imposed on persons under sections 50, 66 and 69 of the Criminal Act, including by the military jurisdictions. It also requests the Government to provide a copy of the 2013 amendments to the Armed Forces Act.***

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

## Syrian Arab Republic

### Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

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

*Articles 1(1), 2(1) and 25 of the Convention. Situations of forced labour arising from the armed conflict. Trafficking and sexual slavery.* Following its previous comments, the Committee notes that according to the 2016 Report of the UN Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic to the Human Rights Council, credible information indicates that women and girls trapped in conflict areas under the control of the Islamic State in Iraq and the Levant (ISIL) face trafficking and sexual slavery. Some specific ethnic groups are particularly vulnerable, such as Yazidis and those from ethnic and religious communities targeted by the ISIL (A/HRC/32/35/Add.2, paragraph 65). The Committee also notes that, according to the 2017 Report of the UN Secretary-General on conflict-related sexual violence, thousands of Yazidi women and girls who were captured in Iraq in August 2014 and trafficked to the Syrian Arab Republic continue to be held in sexual slavery, while new reports have surfaced of additional women and children being forcibly transferred from Iraq to the Syrian Arab Republic since the start of military operations in Mosul (S/2017/249, paragraph 69).

The Committee notes the Government's indication in its report that, pursuant to the Prevention of Human Trafficking Act of 2010, a Department to Combat Trafficking in Persons was established. However, since the

conflict has erupted, trafficking of persons and sexual slavery have increased because of the presence of terrorist groups in the country. The Committee must express its ***deep concern*** that, after almost six years of conflict, trafficking in persons and sexual slavery are practices that are still occurring on a large scale on the ground. ***While acknowledging the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Committee once again urges the Government to take the necessary measures to put an immediate stop to these practices which constitute a serious violation of the Convention and to guarantee that the victims are fully protected from such abusive practices. The Committee recalls that it is crucial that appropriate criminal penalties are imposed on perpetrators so that recourse to trafficking or sexual slavery does not go unpunished. The Committee urges the Government to take immediate and effective measures in this respect, and to provide information on the results achieved.***

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

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

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

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

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* For a number of years, the Committee has been drawing the Government's attention to certain provisions under which penal sanctions involving compulsory prison labour, pursuant to sections 46 and 51 of the Penal Code (Act No. 148 of 1949), may be imposed in situations covered by the Convention, namely:

- Penal Code: section 282 (insult of a foreign State); 287 (exaggerated news tending to harm the prestige of the State); 288 (participation in a political or social association of an international character without permission); and sections 335 and 336 (seditious assembly, and meetings liable to disturb public tranquillity); and
- the Press Act No. 156 of 1960: sections 15, 16 and 55 (publishing a newspaper for which an authorization has not been granted by the Council of Ministers).

The Committee also previously noted that the above-mentioned provisions are enforceable with sanctions of imprisonment for a term of up to one year which involves an obligation to perform labour in prison.

The Committee notes the Government's indication in its report that the Press Act of 1960 had been repealed and replaced by the Media Act No. 108 of 2011, under which the penalty of imprisonment has been replaced by a fine. The Government also indicates that a draft Penal Code has been prepared and is in the process of being adopted. ***The Committee expresses the firm hope that, during the process of the adoption of the new Penal Code, the Government will take all the necessary measures to ensure that persons who express political views or views opposed to the established political, social or economic system benefit from the protection afforded by the Convention and that, in any event, penal sanctions involving compulsory prison labour cannot be imposed on them.***

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

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

## Trinidad and Tobago

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Article 1(c) of the Convention. Sanctions involving compulsory labour for various breaches of labour discipline.* In its reiterated comments since 2000, the Committee has been requesting the Government to take the necessary measures to amend sections 157 and 158 of the Shipping Act, 1987, under which penalties of imprisonment (involving compulsory labour pursuant to sections 255 and 269(3) of the Prison Rules) may be imposed for breaches of labour discipline in circumstances where the life, personal safety or health of persons are not endangered.

The Committee notes that the Government in its report, refers to the continued review of the Shipping Act by the Ministry of Works and Transport, and that the Government indicates that the Ministry will recommend to the Legislative Review Committee of Cabinet that the following provisions be repealed: section 157(b) (wilfully disobeying any lawful command), section 157(c) (continually disobeying any lawful command or wilfully neglecting duty), and section 158(a) and (b) (deserting and neglecting to join a ship and absenting oneself without leave). Moreover, the Government indicates that the Ministry will recommend the amendment of section 157(e) of the Shipping Act (combining with any of the crew to disobey a lawful command or to neglect duty) in order to provide for an appropriate fine instead of imprisonment. ***The Committee once again hopes that, within the framework of the amendments of the above-mentioned sections of the Shipping Act, the Government will take the necessary measures to ensure that no penalties of imprisonment may be imposed on seafarers for breaches of labour discipline.***

*Article 1(d). Sanctions for participating in strikes.* In its reiterated comments since 2000, the Committee has been noting that pursuant to section 8(1) of the Trade Disputes and Protection of Property

Act, a person employed in certain public services (but not limited in this respect to services whose interruption might endanger the life, personal safety or health of the whole or part of the population) who wilfully and maliciously breaks a contract of service, is liable to a fine or to imprisonment of three months. It also noted that pursuant to section 69 of the Industrial Relations Act, penalties of imprisonment (involving compulsory labour under the Prison Rules) could be imposed on certain categories of workers for participation in an industrial action.

In response to the Committee's request for measures to amend these provisions, the Government indicates in its report that the process of reviewing the Industrial Relations Act, chapter 88:01 has been ongoing since 2016, with proposals for amendments currently before the National Tripartite Advisory Council, including the removal of a penalty of imprisonment for the participation in peaceful industrial action. With regard to the Trade Disputes and Protection of Property Act, the Government indicates that the legislative review of this Act is scheduled by the Ministry of Labour and Small Enterprise Development for the first half of 2020. The Committee notes the Government's indication in its supplementary report, according to which due, to the disruption resulting from the COVID-19 pandemic, the review of this Act has not been possible. ***The Committee urges the Government to take the necessary measures to ensure that within the framework of the amendment of the Industrial Relations Act, no penalties of imprisonment may be imposed on persons for the peaceful participation in a strike. It also once again requests the Government to provide information on any measures taken or envisaged to amend the Trade Disputes and Protection of Property Act in this respect.***

## Turkey

### Forced Labour Convention, 1930 (No. 29) (ratification: 1998)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Turkish Confederation of Employers' Associations (TİSK) communicated with the Government's report.

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons*. 1. *Law enforcement measures*. The Committee previously noted the TISK's 2014 observations, according to which Turkey was as destination and transit country for trafficked women, men and children. It noted that section 80 of the Penal Code prohibited trafficking in persons both for the purposes of sexual and labour exploitation. It noted that, in 2015, out of 514 suspects involved in adjudicated cases under section 80 of the Penal Code, 330 were acquitted and that in the first quarter of 2016, out of 148 suspects involved in adjudicated cases, 118 were acquitted. The Committee noted with concern the low number of convictions relating to trafficking in persons, despite the significant number of cases brought to justice. The Committee urged the Government to strengthen its efforts to ensure that all persons who engage in trafficking are subject to prosecution and that in practice, sufficiently effective and dissuasive penalties of imprisonment are imposed.

The Government indicates in its report that Turkey is a transit and destination country for the crime of trafficking in persons, especially for the exploitation of women and children. The Government states that the General Command of the Gendarmerie has taken steps to combat trafficking in persons, including: (i) the issuance of detailed application orders for 81 Provincial Commands of the Gendarmerie explaining the changes in the fight against trafficking in persons; (ii) the continuation of the activities of the anti-trafficking groups established by the Command of the Gendarmerie in 33 provinces; (iii) the inclusion, in the curriculum of the Gendarmerie Coast Guard Academy, of training on combating trafficking in persons; and (iv) the launch of an eight-month project on increasing efficiency of anti-trafficking activities of the General Command of the Gendarmerie on 30 October 2018, which included training of staff on combating trafficking in persons. The Government adds in its supplementary information that training on combating trafficking in persons was also provided to 210 staff members of the General Directorate of Security between May 2019 and July 2020.

The Government further indicates that, under section 80 of the Penal Code, 26 cases of trafficking for prostitution were identified in 2017, 61 persons were arrested and 13 were imprisoned; in 2018, 16 cases of trafficking for prostitution were identified, 128 persons were arrested and 35 were imprisoned; and from January to May 2019, seven cases of trafficking for prostitution were identified, 60 persons were arrested and three were imprisoned. The Committee notes the Government's information but observes that it has not provided any information regarding the penalties applied in these cases. The Committee further notes that the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe (GRETA) noted, in its report adopted on 10 July 2019 concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in Turkey, the Government's information that in 2016, 72 cases of trafficking in persons were initiated, 42 persons were convicted, and 266 persons were acquitted; in 2017, 42 cases were initiated, 45 persons were convicted, and 96 persons were acquitted; and in 2018, 82 cases were initiated, 77 persons were convicted, and 305 persons were

acquitted (paragraph 222). The Committee also notes the Government's supplementary information according to which, between October 2019 and March 2020, 19 persons were convicted for trafficking in persons and 102 persons were acquitted. Of the 19 persons convicted, the Committee notes that one person was sentenced to a fine and 18 persons were sentenced to imprisonment and a fine.

The Committee also notes GRETA's indication that, following the removal from office of some 4,500 judges and prosecutors after July 2016, newly appointed staff had not received sufficient training to efficiently investigate and adjudicate complex criminal cases, including trafficking in persons (paragraph 219). GRETA also indicated that there were practical difficulties in adjudicating trafficking in persons cases and distinguishing between trafficking in persons and certain other offences, such as prostitution (section 227 of the Penal Code) and violation of freedom of work and labour (section 117 of the Penal Code). Representatives of the judiciary indicated that cases initiated as trafficking in persons were sometimes requalified at the stage of court proceedings as other offences, usually prostitution, which are punishable by lesser penalties (paragraph 224). ***While acknowledging the measures taken by the Government to combat trafficking in persons, the Committee urges it to continue to take the necessary measures to ensure that thorough investigations and prosecutions are carried out against all persons engaged in trafficking in persons both for the purposes of sexual and labour exploitation, and that sufficiently effective and dissuasive penalties are applied in practice. In this regard, it requests the Government to continue to provide information on the practical application of section 80 of the Penal Code, including the number of prosecutions, convictions and the specific penalties imposed, as well as the facts that led to sentences of fines only. Lastly, the Committee requests the Government to pursue its efforts to provide training to law enforcement officers, including judges and prosecutors, to ensure that perpetrators of trafficking in persons are appropriately prosecuted and sanctioned under the offence of trafficking in persons, and to provide information in this regard.***

2. *Protection and assistance for victims*. The Committee previously noted the enactment of the Law on Foreigners and International Protection (No. 6458) 2013, which systematized victim identification procedures. It also noted the adoption of the Regulation on Combating Human Trafficking and Protection of Victims in 2016, setting forth the procedures and principles for the prevention of trafficking in persons and the protection of victims, including the granting of residence permits for foreign victims. The Committee further took note of the Voluntary and Safe Return Programme for victims wishing to leave Turkey, as well as the Victim Support Programmes, which include the provision of shelter homes or safe houses, health services, psychosocial help and legal assistance. The Committee requested the Government to provide information on the practical application of the new above-mentioned Law and Regulation with regard to the identification of victims and the provision of protection and assistance provided to them.

The Government indicates that, between July 2019 and March 2020, the most prevalent countries of origin of victims of trafficking in persons were Uzbekistan, Turkey and Moldova. The Government states that in 2017, 303 persons were identified as victims of trafficking by the Provincial Directorates of Migration Management, and 134 persons in 2018. It adds that in 2019, 215 persons were identified as victims of trafficking, and 79 in the first half of 2020, mainly women. The victims who stayed in Turkey benefited from the Victim Support Programmes (24 out of the 134 victims in 2018, 35 in 2019 and 42 in the first half of 2020), while some victims who preferred to leave the country benefited from the Voluntary and Safe Return Programme (101 victims in 2018, 153 in 2019 and 22 in the first half of 2020). The capacity of shelters for victims of trafficking has increased to 42 places. The opening of a third shelter is under consideration. Each victim admitted to a shelter has an individualized support programme, which has included, in recent years, services such as monthly financial aid, health services, psychological support, vocational training, and access to the labour market, legal assistance and leisure activities.

The Government further indicates that it has established a Department of legal support and victim rights within the General Directorate of Criminal Affairs (Ministry of Justice), which aims to inform all victims of crime, including victims of trafficking, of their rights and the assistance and support services available to them, as well as to support victims in the judicial process and to facilitate their access to justice. In addition, Forensic Support and Victim Services Directorates have been established in several courthouses to provide victims, including victims of trafficking in persons, with legal aid and support services, such as measures to prevent re-trafficking for victims of trafficking, accompanying victims of trafficking during court hearings, and referring victims to relevant institutions for psychological support, if necessary. The Committee also notes the Government's indication that a guidebook on approaching victims, with a specific headline on victims of trafficking and foreign victims, has been prepared for professionals who provide services to victims of crime, especially law enforcement, health professionals and judicial workers.

The Committee notes the statement in the communication of the TISK that in cooperation with the International Organization for Migration, the urgent helpline 157 was established for potential victims of trafficking in persons, with operators providing services in Russian, Romanian, English and Turkish. The TISK further states that the Coordination Commission on combating human trafficking was established

under the Regulation on combating human trafficking and protection of victims, and held its first meeting in 2017 to develop measures on inter-institutional cooperation, awareness activities, and training materials for personnel. The Committee further notes in this regard the Government's supplementary information that the Coordination Commission on combating human trafficking aims at conducting studies, formulating policies and strategies, developing an action plan and ensuring cooperation to prevent and combat trafficking in persons. The Commission met in 2017, 2018 and 2019, resulting, inter alia, in: (i) the designation of provincial human trafficking liaison officers in 36 provinces; (ii) awareness-raising activities for the general public; and (iii) the training of more than 1,000 professionals from public institutions and non-governmental organizations on combating trafficking in persons in 2019.

The Committee takes notes of GRETA's indication, in its 2019 report, according to which trafficking in persons for the purpose of sexual exploitation prevails (paragraph 13). GRETA also indicated that the Directorate General of Migration Management, which has been coordinating national action against trafficking in persons since 2013, has a Department of protection of victims of human trafficking (paragraph 26). The Committee notes that GRETA pointed out the limited capacity of specialized shelters for victims of trafficking, as well as the fact that only a few victims remained in Turkey and took part in victim assistance programmes. GRETA was also concerned at the lack of specialized assistance for Turkish victims of trafficking and male victims of trafficking (paragraph 169). ***While welcoming the efforts of the Government, the Committee requests it to continue to take measures in order to improve the identification of and assistance for victims of trafficking in persons, and to provide information in this regard. It requests the Government to continue to provide information on the measures that have been developed by the Coordination Commission on Combating Human Trafficking to prevent and combat trafficking in persons, as well as to indicate the activities of the Department of Protection of Victims of Human Trafficking of the Directorate General of Migration Management. Lastly, the Committee requests the Government to indicate the number of victims of trafficking in persons identified and provided with protection and assistance, through the various programmes, directorates and departments mentioned above that support victims of trafficking in persons.***

*Article 2(2)(a). Compulsory military service*. The Committee previously requested the Government to repeal section 10 of Act No. 1111 on military service, according to which conscripts in the surplus reserve might be assigned to work for public bodies and institutions.

The Committee notes the observations of the TISK according to which Act No. 7179 on military recruitment is a positive development with regard to bringing the national legislation in line with the Convention.

The Committee notes with ***satisfaction*** the entry into force of the Act No. 7179 on military recruitment on 26 June 2019, which replaces Act No. 1111 on military service and does not contain any provision regarding the fulfilment of military service obligations in public institutions and organizations.

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

## Turkmenistan

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

The Committee proceeded with the examination of the application of the Convention on the basis of the observations received from the International Trade Union Confederation (ITUC), on 21 September 2020, as well as on the basis of the information at its disposal in 2019. ***The Committee requests the Government to reply to the observations of the ITUC.***

The Committee also notes the observations of the ITUC, received on 1 September 2019.

*Article 1(b) of the Convention. Imposition of forced labour as a method of mobilizing and using labour for purposes of economic development. Cotton production.* In its previous comments, the Committee noted that, in accordance with section 7 of the Act on the legal regime governing emergencies of 1990, in order to mobilize labour for the needs of economic development and to prevent emergencies, state and government authorities may recruit citizens to work in enterprises, institutions and organizations. The Committee considered that the notion of "needs of economic development" did not seem to satisfy the definition of "emergency" referred to in the Forced Labour Convention, 1930 (No. 29), and was therefore incompatible with both *Article 2(2)(d)* of Convention No. 29 and *Article 1(b)* of Convention No. 105, which prohibits the imposition of compulsory labour as a method of mobilizing and using labour for purposes of economic development. The Committee also noted the Government's indication that the State of Emergency Act, the Emergency Response Act and the Act on preparation for and carrying out of mobilization in Turkmenistan do not mention the concept of "purposes of economic development". Instead, citizens may be employed in undertakings, organizations and institutions during mobilization in order to ensure that the country's economy continues to function and to produce goods and services that are essential to satisfy the needs of the State, the armed forces and the population, in case of emergency.

Moreover, section 19 of the Labour Code provides that an employer may require a worker to undertake work which is not associated with his or her employment in cases specified by law.

In its conclusions adopted in June 2016, the Conference Committee urged the Government: (i) to take effective measures, in law and in practice, to ensure that no one, including farmers and public and private sector workers, is forced to work for the state-sponsored cotton harvest, and threatened punishment for the lack of fulfilment of production quotas under the pretext of "needs of economic development"; (ii) to repeal section 7 of the Act on the legal regime governing emergencies of 1990; and (iii) to seek technical assistance from the ILO in order to comply with the Convention in law and in practice and to develop a national action plan to eliminate forced labour in connection with the state-sponsored cotton harvest.

The Committee noted that the International Organisation of Employers (IOE), in its observations of 2016, expressed high concern at the reported practices of forced labour in cotton production which affected farmers, businesses and private and public sector workers, under threat of punishment for the lack of fulfilment of production quotas. Moreover, the observations made by the ITUC in 2016 highlighted the practices of forced mobilization by the Government of employees of a wide range of private and public sector institutions to pick cotton, including education and healthcare institutions, municipal government offices, libraries, museums, meteorological agencies, cultural centres, sports organizations, utility, manufacturing, construction, telecommunications and fishing companies. Those who refused faced administrative penalties, including public censure, docked pay and termination of employment. In this regard, the Committee noted the Government's statement that, in certain regions of the country, local government and agricultural producers, together with local employment services, organized voluntary recruitment from among those registered during the seasonal cotton harvest in order to provide seasonal employment to that sector of the population.

The Committee further noted from the report of the ILO technical advisory mission of September 2016 that although representatives of international organizations and foreign embassies that the mission met with indicated that the practice of forced labour existed, in most cases they did not have direct proof of this as it was difficult to access the cotton fields. The mission report took note of the various national strategies and action plans developed by the Government, including the National Human Rights Action Plan (2016–2020); the National Action Plan to Combat Trafficking in Persons (2016–2018); the United Nations Partnership Framework for Development signed in April 2016; and the Sustainable Development Goals (SDGs) adopted in September 2016. It also took due note of the political will demonstrated by the Government to address the issue of forced labour in cotton harvesting in the country. The Committee urged the Government to continue to collaborate with the ILO with a view to eliminating, in law and in practice, forced labour in connection with the state-sponsored cotton harvesting.

The Committee notes from the–observations made by the ITUC in 2019 that in November 2018 workers in all sectors of the national economy were sent to the cotton fields, some even sent to remote districts hundreds of kilometres away from their homes. For the first time in 15 years, teachers were forced to spend their nine-day fall break picking cotton. In the region of Mary, an estimated 70 per cent of the teachers were required to pick cotton during the 2018 harvest season. The ITUC also states that people worked from early morning until dusk with a 30–60 minute break for lunch and in the evening they were bussed back to the city. People who were sent away to the fields for ten or more days stayed in a temporary base with an earth floor and without sanitation facilities. Farmers were required to produce a large cotton yield and were expected to meet the state quotas and pay the workers that were forced to work by the Government to pick cotton. Authorities threatened farmers with loss of land if they did not meet government-imposed quotas.

The Committee notes the Government's information in its report that the Decision of the Public Council adopted in September 2018 aims to improve the working methods in the agricultural sector and place work in this field on a modern footing and provide for the broad recruitment of private producers in agriculture. According to this Decision, plots of land shall be offered on a contractual basis to joint stock companies, family farms and other legal entities and producers for use for a period of 99 years for the production of crops like wheat and cotton. The Committee also notes the Government's information that it has resorted to using cotton harvesting machines to pick cotton and hence there is no need for the mass recruitment of human resources for this purpose. The Government indicates that during the harvesting season in 2017, 1,200 harvesting machines were used and in 2018, 500 additional machines were purchased from Uzbekistan and a contract for 200 such machines were concluded with a company that manufactures agricultural equipment. The Committee further notes the Government's information that together with the social partners, a draft cooperation programme has been developed and submitted to the ILO for consideration. This draft sets out measures for the implementation of international rules and standards, decent work, fair pay and social protection, and the active participation of social partners on issues of decent work and employment. The Committee notes, however, that this draft cooperation programme has not been agreed upon.

The Committee further notes from the recent observations of the ITUC that during the 2019 cotton harvests, public sector employees, including teachers, doctors, municipal service and utility companies'

employees continued to be mobilized for cotton picking or forced to pay for replacements pickers. Those unable or unwilling to pick cotton had to pay a substantial part of their income. As of October 2019, teaching staff had each paid 285 Turkmenistan manats (US$16) while their average monthly income is around US$90. Further evidence shows that public sector workers are being mobilized for the 2020 harvest.

The Committee notes that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations of October 2018, expressed concern at the reported continued widespread use of forced labour among workers and students under threat of penalties during the cotton harvest (E/C.12/TKM/CO/2, paragraph 23). It also notes from the Summary of Stakeholders' submissions of February 2018 to the United Nations Human Rights Council that people forced to pick cotton had been compelled to sign declarations on "voluntary" participation in the harvest (A/HRC/WG.6/30/TKM/3, paragraph 49).

The Committee must express its ***deep concern*** at the continued practice of forced labour in the cotton sector and the poor working conditions of workers employed in this sector. ***The Committee therefore urges the Government to take measures to ensure the elimination of the use of compulsory labour of public and private sector workers, as well as students, in cotton farming, and requests it to provide information on the measures taken to this end and the concrete results achieved, with an indication of the violations detected and the sanctions applied. In this regard, the Committee strongly encourages the Government to avail itself of ILO technical assistance, with a view to eliminating, in law and in practice, forced labour in connection with the state-sponsored cotton harvesting as well as to improve recruitment and working conditions in the cotton sector.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

***In light of the situation described above, the Committee is bound to observe that there has been no meaningful progress to address the issue of mobilization of persons for forced labour in the cotton harvest since the discussion of the case by the Conference Committee and the visit of an ILO technical advisory mission to the country in 2016. It notes with deep concern the continued practice of forced labour in the cotton sector.***

***[The Government is asked to supply full particulars to the Conference at its 109th Session and to reply in full to the present comments in 2021.]***

## Uganda

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* For a number of years, the Committee has been referring to the following provisions of the national legislation, under which penal sanctions involving compulsory prison labour, by virtue of section 62 of the Prisons Regulations, may be imposed:

- the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour; and
- sections 54(2)(c), 55, 56 and 56(a) of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus render any speech, publication or activity on behalf of, or in support of, such a combination, illegal and punishable with imprisonment (involving an obligation to perform labour).

The Committee requested the Government to take the necessary measures to ensure that the above provisions are amended or repealed so as to ensure the compatibility of the legislation with the Convention.

The Committee notes the Government's indication in its report that both the Public Order and Security Act and the Penal Code are in conformity with the Convention.

However, the Committee notes the statements made by a certain number of governments in the 2016 report of the Working Group on the Universal Periodic Review (report to the UN Human Rights Council (HRC)), recommending the amendment of the Public Order Management Act of 2013, in order to ensure full respect of freedom of association and peaceful demonstration (A/HRC/34/10, paragraphs 115.101, 117.8, 117.18 and 117.52). Moreover, the Committee notes that, according to the Report of the HRC of 2017, a certain number of stakeholders regretted that Uganda failed to fully implement its commitments from the first Universal Periodic Review regarding freedom of expression, peaceful assembly and association. They also expressed concern over physical assaults on journalists and the harassment of political activists as well as human rights defenders, and urged for reforms to the Penal Code, the Press and Journalists Act and the Public Order Management Act of 2013 (A/HRC/34/2, paragraphs 688, 692, 693 and 694).

The Committee further notes with ***concern*** that penalties of imprisonment (involving compulsory prison labour) may be imposed under the following provisions of the Public Order Management Act, 2013: section 5(8)

(disobedience of statutory duty in case of organizing a public meeting without any reasonable excuse); and section 8(4) (disobedience of lawful orders during public meetings).

In this regard, the Committee is bound to recall that *Article 1(a)* of the Convention prohibits all recourse to sanctions involving an obligation to perform labour, as a means of political coercion or as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to, or call for, violent means to these ends. ***In light of the above considerations, the Committee urges the Government to take the necessary measures to ensure that the above-mentioned provisions of the Public Order and Security Act, No. 20 of 1967, the Penal Code, and the Public Order Management Act of 2013 are amended or repealed so as to ensure that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requests the Government to provide information on measures taken in this regard.***

*Article 1(d). Penal sanctions involving compulsory labour as a punishment for having participated in strikes.* The Committee previously noted that the Labour Disputes (Arbitration and Settlement) Act, 2006, contains provisions concerning the resolution and settlement of labour disputes which could lead to the imposition of compulsory arbitration procedures, thus making strikes or other industrial action unlawful. Strikes may be declared unlawful, for example, where the minister or the labour officer refers a dispute to the Industrial Court (section 28(4)) or where the Industrial Court makes an award which has come into force (section 29(1)). The organization of strikes in these circumstances is punishable with imprisonment (involving compulsory prison labour) pursuant to sections 28(6), 29(2) and (3) of the Act, and the Committee accordingly reminded the Government that such penalties were not in conformity with the Convention. In addition, the Committee noted that, under section 34(5) of the Labour Disputes (Arbitration and Settlement) Act, 2006, the minister may refer disputes in essential services to the Industrial Court, thus making illegal any collective withdrawal of labour in such services, with violation of this prohibition being punishable with imprisonment (involving an obligation to perform labour) (section 33(1) and (2) of the Act). The Committee requested the Government to take the necessary measures to bring the above-mentioned provisions of the Labour Disputes (Arbitration and Settlement) Act, 2006 into conformity with the Convention.

The Committee notes the absence of information on this point in the Government's report. ***The Committee therefore once again requests the Government to take the necessary measures to bring the above-mentioned provisions of the Labour Disputes (Arbitration and Settlement) Act, 2006, into conformity with the Convention, either by removing the penalties of imprisonment involving compulsory labour, or restricting their scope to essential services in the strict sense of the term (namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population), or to situations of acute national crisis. The Committee requests the Government to provide information on measures taken in this regard.***

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

## Ukraine

### Forced Labour Convention, 1930 (No. 29) (ratification: 1956)

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* 1. *Law enforcement and measures to combat trafficking in persons.* In response to its previous comments, the Committee notes that the Government refers, in its report, to the 2016–2020 National Action Plan on combating trafficking in human beings and has communicated a copy of the 2018 implementation report on this Plan. It welcomes the detailed information therein on the activities taken to combat trafficking in persons, including multiple educational and awareness-raising activities, and the training of law enforcement officers, including prosecutors and judges.

The Committee also notes the 2018 report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation by Ukraine of the Council of Europe Convention on Action against Trafficking in Human Beings. The report notes a number of positive developments, such as the establishment of specialized police units and prosecutors, and a marked increase in the number of investigations into trafficking in persons between 2016 and 2017 (from 115 to 347). GRETA also emphasizes the importance of taking additional measures, such as ensuring that investigations into the offence of trafficking in persons also lead to convictions, and that sentences are proportionate to the gravity of the offence. In this respect, the Committee notes from the information in the 2018 implementation report and the reference in that report to the website of the State Judicial Administration, that in 2018 the police investigated 291 cases of trafficking in persons pursuant to section 149 of the Criminal Code on trafficking in human beings, 185 of which were referred to public prosecution, of which 168 were submitted to the courts, which resulted in 15 convictions, and five prison sentences. The Committee notes with ***concern*** the low number of convictions regarding trafficking in persons, despite the significant number of cases brought to justice. In this regard, the Committee recalls that, by virtue of *Article 25* of the Convention, the exaction of forced or compulsory labour shall be punishable as a penal offence, and the penalties imposed by law shall be adequate and strictly enforced. ***The Committee therefore strongly urges the Government to take the necessary measures to ensure strict application of the national legislation, so that sufficiently effective and dissuasive penalties of imprisonment are***

***imposed and enforced against perpetrators. The Committee further requests the Government to continue providing information on measures taken in this regard, including training and capacity building of law enforcement authorities, as well as on the results achieved. It also requests the Government to continue providing information on the number of prosecutions, convictions and specific penalties applied pursuant to section 149 of the Criminal Code.***

2. *Protection and assistance for victims.* In its previous comment, the Committee welcomed the measures taken by the Government to identify and provide protection and assistance to the victims of trafficking in persons and requested the Government to continue to provide information on measures taken in this regard.

Concerning the identification of victims of trafficking in persons, the Committee notes, from the 2018 implementation report and the 2018 GRETA report, the information on the training provided to relevant actors and an upward trend in the number of victims identified by the Ministry of Social Policy (27 victims identified in 2014, 83 in 2015, 110 in 2016, 198 in 2017, and 221 in 2018). However, the Committee also notes from the 2018 GRETA report that statistical data on trafficking in persons remains largely unconsolidated, as different actors (law enforcement agencies, Ministry of Social Policy, International Organization for Migration (IOM), NGOs and social service providers) have their own statistics on the number of victims of trafficking in persons. The GRETA report also recommends the recruitment and training of a sufficient number of labour inspectors on trafficking in persons for the purpose of labour exploitation.

Concerning the provision of assistance and support for victims of human trafficking, the Committee notes that, according to the 2018 implementation report, such victims were provided with financial assistance and services, such as consultations on employment, legal aid, medical examinations and psychological assistance in two of the 27 regions. The Committee also notes the recommendations made by GRETA to ensure adequate funding and staff to work with victims of trafficking in persons, and to provide a sufficient number of places for all victims who need safe accommodation. ***Noting the information in the 2018 report on the implementation of the 2016–2020 National Action Plan on combating trafficking in human beings, the Committee requests the Government to provide detailed information on the protection and assistance provided to victims of trafficking in persons. In this regard, it requests the Government to continue to provide information on the number of victims identified, the types of assistance and services provided to them and the number of those who have benefited from such assistance and services. It also requested the Government to provide information on any progress made regarding measures taken, such as training of labour inspectors, use of indicators and tools, and cooperation between the relevant actors, to improve the identification of victims of trafficking.***

3. *Vulnerability of displaced people to trafficking in persons.* In its previous comment, the Committee noted the indication in the 2015 report of the United Nations Special Rapporteur on the human rights of internally displaced persons that the number of internally displaced persons had dramatically increased since early June 2014 (A/HRC/29/34/Add.3, para. 7). The Committee also noted that according to the Situation Analysis of June 2016 on human trafficking in Ukraine, the IOM reported that internally displaced people were targeted by unscrupulous intermediaries who offered brokerage services for emigration and receiving refugee status abroad.

In this respect, the Committee notes that the 2016–2020 National Action Plan on combating trafficking in human beings provides for a number of preventive activities, particularly on the risks for internally displaced persons of becoming victims of trafficking, and that a proposal has been made to develop a guide with indicators for the identification of victims of trafficking, including internally displaced persons. The Committee also notes from the 2018 implementation report that some awareness-raising activities were undertaken, aimed at or with the participation of internally displaced persons. The Committee notes from the 2018 GRETA report that GRETA remains concerned by the negative consequences of the large number of internally displaced persons, who have been identified as being vulnerable to trafficking in persons, on the fight against human trafficking. ***The Committee requests the Government to continue to take measures to ensure that internally displaced persons, placed in a vulnerable situation, do not become victims of trafficking in persons.***

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

## **Abolition of Forced Labour Convention, 1957 (No. 105)** (ratification: 2000)

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee noted that under section 185-1 of the Code on Administrative Offences, a second breach (within a year) of the rules governing the organization and conduct of public meetings, street marches and demonstrations may be punishable with correctional labour for a term of up to two months. The Committee also noted the Government's indication that two Bills on the Freedom of Peaceful Assembly were tabled for consideration by the Parliament. The Bills proposed, inter alia, to define the legal framework concerning the organization and conduct of peaceful

assemblies; and to amend or repeal section 185-1 of the Code on Administrative Offences with a view, as indicated in the preamble, to prevent politically motivated prohibitions of assemblies by the judiciary and arrests of protestors.

The Committee notes that the Government does not provide information on the progress made with regard to the amendment or repeal of section 185-1 of the Code on Administrative Offences. The Government indicates that section 185-1 provides penalties in the form of correctional labour in particular for violations of the procedures concerning organizing and holding gatherings, meetings, street marches and demonstrations, but not for the organization itself or for the participating in such gatherings. The requirements concerning organizing and holding peaceful gatherings are not yet established by law. The Committee notes that, according to the statistics provided by the Government, 43 cases were considered under section 185-1 of the Code, resulting in four administrative offence notices (including two warnings, a fine and a conviction to public labour). Furthermore, the Committee observes that the Government has not provided information on the facts based on which these administrative offences were imposed.

The Committee recalls that *Article 1(a)* of the Convention prohibits the use of compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The range of activities, which must be protected under this provision from punishment involving compulsory labour, comprises the freedom to express political or ideological views as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views (see paragraph 302 of the 2012 General Survey on the fundamental Conventions). ***The Committee reiterates the hope that in the framework of the adoption of the legislation on the freedom of assembly, the Government will take into account the comments of the Committee with a view to amending or repealing section 185-1 of the Code on Administrative Offences, so as to ensure that no sanctions involving compulsory labour may be imposed as a punishment on persons exercising their right to assemble peacefully. Pending the adoption of the relevant legislation, the Committee requests the Government to continue to provide information on the application in practice of section 185-1 of the Code on Administrative Offences, particularly concerning any persons who have been sanctioned to correctional work, indicating the facts that led to the legal proceedings and to the imposition of sanctions.***

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

## United Arab Emirates

### Forced Labour Convention, 1930 (No. 29) (ratification: 1982)

*Articles 1(1), 2(1) and 25 of the Convention*. 1. *Legal framework concerning migrant workers.* In its previous comments, the Committee referred to the report adopted in March 2016 by the tripartite committee set up to examine the representation made by the International Trade Union Confederation (ITUC) alleging non-observance of Convention No. 29 by the United Arab Emirates. The Committee noted that in order to ensure that migrant workers do not face situations that increase their vulnerability to forced labour practices, the Government has adopted a number of legislative measures, including: Ministerial Decree No. 764 of 2015 on the Standard Employment Contract, and Ministerial Decree No. 766 of 2015 on Rules and Conditions for Granting a New Work Permit to a Worker whose Labour Relations with an Employer has Ended.

In this regard, the Committee requested the Government to provide information on the application in practice of the new legislation, in particular information on the following points: (a) recruitment fees, contract substitution, and passport confiscation issues; (b) the sponsorship system; (c) migrant domestic workers; (d) labour inspection and effective penalties; and (e) access to justice and protection of victims.

*(a) Recruitment fees, contract substitution, and passport confiscation.* The Committee notes the Government's indication in its report that following the adoption of Ministerial Decree No. 764 of 2015 on the Standard Employment Contract, employers have the obligation to send the offer letter, which is a copy of the original employment contract to the worker in the sending country prior to departure. The offer letter must indicate all the terms and conditions of the contract, including the wage. Once the employment contract is signed and registered on the Ministry of Human Resources and Emiratization (MOHRE) database, the worker is granted the entry visa to the country. Any worker may have electronic access to a copy of the employment contract via the Ministry's site. Upon arrival of the worker, both the employer and the worker are instructed to visit one of the guidance centres that the MOHRE has established in partnership with the private sector. These centres aim to provide an induction programme to workers regarding the Labour Code and the residence laws of the country. In addition, both parties can sign the contract in these centres.

Regarding the Action Plan on migrant workers, the Government refers to a series of legislative measures that have been adopted since 2015, including: (i) the adoption of Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations; (ii) the signature of a series of Memoranda of Understanding with a number of countries to ensure that licenced recruitment agencies

from both countries do not charge workers any fees; and (iii) the provision of adequate accommodation that meet strict occupational safety and health standards following the adoption of Ministerial Decree No. 212 of 2014. As per the issue of passport confiscation, the Committee notes the Government's indication that the Standard Employment contract for workers in the private sector provides for the right of workers to retain their identification documents. With regard to domestic workers, section 15(9) of Act No.10 of 2017 on domestic workers provides for the obligation of the employer to ensure the worker's right to retain his/her personal identification documents. The Government also indicates that, in cases brought by workers against employers over the withholding of passports, the court decision is always in favour of the worker and the employer is obliged to return the passport. In this regard, the Government refers to a series of judgements, including of the Cassation Court of September 2012, where the court referred to the freedom of travel and movement as rights guaranteed by the Constitution. ***In light of the above positive measures, the Committee requests the Government to continue to pursue its efforts to ensure that migrant workers are protected from abusive practices linked to contract substitutions, the imposition of recruitment fees and the confiscation of passports. It also requests the Government to provide information on the results achieved in this regard, including statistical data.***

*(b) Sponsorship system.* Referring to Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations, the Committee notes the Government's indication that for a fixed-term contract of two years, either party can terminate the contract, either by mutual agreement of the two parties during the course of the term of the contract, or unilaterally, provided the terminating party complies with the legal procedures. This includes the observance of a notice period of up to three months and the compensation of the other party in accordance with the contract for wage arrears of no more than three months. According to the Government, the number of cases involving termination of employment contracts in accordance with Ministerial Decree No. 765, contracts during the period between January 2016 and December 2018 came to 2,932,062 cases. The Government also indicates that following the adoption of Decree No. 766 of 2015 on Rules and Conditions for Granting a New Work Permit to a Worker whose Labour Relations with an Employer has Ended, former employers no longer have the power to subject the worker to the threat of deportation or other negative practices. For the period between 2016 and 2018, the number of cases involving transfers to a new employer came to 229,971. ***The Committee requests the Government to continue to provide information on the number of employment transfers that have occurred recently, disaggregated by gender, type of work and contract.***

*(c) Migrant domestic workers.* The Committee previously urged the Government to take the necessary measures to ensure that migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour, and to ensure that the Bill regulating the working conditions of migrant domestic workers will be adopted in the near future.

The Committee notes with ***satisfaction*** the adoption of Act No.10 of 2017 on domestic workers as well as the standard domestic labour contract and its annexes. It notes that the employment contract provides for the rights and obligations of both the worker and the employer, including the amount of the basic salary, the accommodation, and the daily and weekly rest periods (sections 15–18). Regarding the termination of the employment contract, section 23 of Act No.10 provides for the possibility for both the employer and the worker to terminate the contract unilaterally if one party fails to fulfil his/her obligations towards the other. In all instances of the termination of the contract, the MOHRE shall decide whether to grant a new work permit to the worker as per the regulations that are in force in the UAE (section 23(4)). Furthermore, the new employer is responsible for paying the fees for the transfer of sponsorship (*kafala*) and for the new residence permit to the worker. The employer also has the obligation to notify the MOHRE if the worker abstains from employment or is absent without valid reason. Likewise, the worker has the obligation to notify the MOHRE when leaving the workplace without the knowledge of the employer. With regard to conflict resolution, section 21 of the Act states that in the event that the employer and worker have a disagreement, the MOHRE will adjudicate the dispute. Migrant domestic workers can also refer to the *Tad-beer* Centres (support services established following the adoption of Ministerial Decree No. 819 of 2017) to seek legal support. These centres are dedicated to providing all services relating to migrant domestic workers upon their arrival in the country. This includes the provision of a medical examination, the issuance of health insurance and ID cards and stamping of the residence visa. The Government further indicates that MOHRE has recently issued the Ghanayem bank card for domestic workers as a smart multi-purpose bank ID card with a variety of features, including serving as an electronic wallet. It also provides a new automated system to monitor transfer transactions to ensure that domestic workers' wages are protected and to transfer salaries quickly while ensuring the confidentiality of both the client's and the MOHRE's information. ***The Committee requests the Government to provide information on the application in practice of Act No.10 of 2017 on domestic workers, including statistical information on the number of employment transfers of migrant domestic workers that have taken place since the entry into force of the Act.***

*(d) Labour inspection and effective penalties.* The Committee notes the Government's indication that 1,146 cases of violations were detected by the labour inspection, including 1,144 cases of late payment of

wages involving 80,633 migrant workers. The two other remaining cases were linked to illegal salary deductions and failure to calculate overtime pay. For all these cases, the judicial decisions handed down have required the payment of fines. The Committee takes note of judgment No. 1 of 2016, judgment No. 45 of 2017, and judgment No. 49 of 2017, annexed to the Government's report, that illustrate the high fines imposed. The Committee further notes that sections 19 and 20 of Act No. 10 of 2017 on domestic workers grant labour inspectors the possibility to inspect the places of residence of the domestic worker in the event of a complaint being raised by the worker or if there are credible indications of violations of the provisions of the Act. ***The Committee requests the Government to indicate whether any inspections were carried out pursuant to sections 19 and 20 of Act No. 10 on domestic workers, indicating cases of violations that have been detected and registered by the labour inspectors, as well as the penalties applied for such violations.***

*(e) Access to justice and protection of victims.* The Committee notes the Government's indication that in 2018 the MOHRE launched the *Tawa-Fouq* (reconciliation) centres for labour disputes resolution involving migrant workers. These centres perform a preliminary role of mediation to resolve the labour dispute amicably. They issue recommendations that they submit to the MOHRE. The latter is authorized to take the final decision over whether the dispute is resolved amicably or is referred to the judiciary. In this regard, the judicial departments have established a standard form on the manner in which workers may bring a case, comprising an integrated case file. This is submitted electronically to the judicial departments. The Government also refers to Ministerial Decree No. 749 of 2018 on settling collective labour disputes where more than 100 workers from the disputing parties are involved. A conciliation committee shall settle the dispute amicably within ten days. If the dispute settlement fails, it will be brought to the arbitration committee that shall consider the dispute within 30 days.

Regarding the protection and assistance provided to migrant workers, the Committee notes the Government's information on the measures taken to protect victims of trafficking in persons that are also applicable to migrant workers. ***The Committee requests the Government to continue to take the necessary measures to ensure that migrant workers can approach the competent authorities and access justice mechanisms, without fear of retaliation. It also requests the Government to provide statistical information on the number of migrant workers, including migrant domestic workers, who have had recourse to legal assistance from the* Tawa-Fouq *(reconciliation) centres, as well as the outcome of the labour disputes. It requests the Government to indicate whether the legal assistance provided in the reconciliation centres is available in the language spoken by the migrant worker. Lastly, the Committee requests the Government to provide information on the judicial proceedings instigated and the number of judgements handed down in this regard.***

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

## Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system*. 1. *Federal Act No. 15 of 1980.* For a number of years, the Committee has been referring to the following provisions of Federal Act No. 15 of 1980 governing publications and publishing, under which penal sanctions involving compulsory prison labour may be imposed (by virtue of sections 86 and 89 of the Penitentiaries Regulations Act No. 43 of 1992), for the violation of the following provisions:

- section 70: prohibition on criticizing the Head of State or the rulers of the Emirates;
- section 71: prohibition on publishing documents harmful to Islam, or to the Government, or to the country's interests or the basic systems on which society is founded;
- section 76: prohibition on publishing material containing information shameful to the Head of State of an Arab or Muslim country or a country with friendly ties, as well as material which may threaten the ties of the country with Arab, Muslim or friendly countries;
- section 77: prohibition on publishing material which causes an injustice to Arabs or constitutes a misrepresentation of Arab civilization or cultural heritage;
- section 81: prohibition on publishing material which harms the national currency or causes confusion over the economic situation of a country.

The Committee requested the Government to take the necessary measures to amend the above provisions and to ensure that the ensuing amendments, which would be contained in the draft Act on media activities, would be in conformity with the Convention.

The Committee notes the Government's indication in its report that the draft Act regulating media activities is still under consideration and has not been adopted to date. ***The Committee once again expresses the firm hope that the Government will take the necessary measures to amend or repeal the above-mentioned provisions within the framework of the adoption of the draft Act on media activities, in order to ensure that no sanctions involving compulsory labour (including compulsory prison labour), can be imposed for holding or expressing political views or views ideologically opposed to the established***

***political, social or economic system. The Committee also requests the Government to provide information on any progress made in the adoption of this draft Act, as well as a copy of the text once adopted.***

2. *Penal Code.* Over a number of years, the Committee has been drawing the Government's attention to the incompatibility with the Convention of certain provisions of the Penal Code which prohibit the establishment of an organization or the convening of a meeting or conference for the purpose of attacking or mistreating the foundations or teachings of the Islamic religion, or calling for the observance of another religion, with such offences being punishable with imprisonment for a maximum period of ten years (sections 317 and 320). It also referred to sections 318 and 319 of the Penal Code pursuant to which a prison sentence could be imposed involving an obligation to work, on any person who is a member of an association specified in section 317, who challenges the foundations or teachings of the Islamic religion, proselytizes another religion or advocates a related ideology. The Committee expressed its firm hope that appropriate measures would be taken to bring the above-mentioned sections into conformity with the Convention.

The Committee notes the Government's indication that the application of articles 318 and 320 is strictly limited and the number of cases in which the provisions of these articles have been applied are minimal and usually receive a suspended sentence with deportation. In this regard, the Government refers to Criminal Court judgement No. 12311/2002, issued in December 2002 against a certain person. The defendant has been accused of criticizing the principles of the Islamic religion and of possessing and disseminating publications and items offensive to this religion. The Public Prosecution charged him based on sections 318, 320 and 323 of the Penal Code. The person was sentenced to one year's imprisonment, with deportation from the country. The Government adds that, the penalty of imprisonment was not applied in practice, and the Court settled for the deportation of the accused from the country on condition that he did not commit the same offence on the territory of the country within the next three years.

The Committee observes that, although the penalty of imprisonment was not applied in practice for this case, this does not imply an exemption of its application in other similar cases, as long as sections 317-320 of the Penal Code provide for sanctions of imprisonment, involving an obligation to work. ***The Committee, therefore, once again expresses its firm hope that appropriate measures will be taken to bring sections 317–320 of the Penal Code into conformity with the Convention, for example, by limiting their scope to acts of violence or incitement to violence or by replacing sanctions involving compulsory labour with other kinds of sanctions, (such as fines) and that the Government will soon be in a position to report on the progress made in this regard. Pending the adoption of such amendments, the Committee requests the Government to provide information on the application in practice of sections 317–320, including copies of any relevant court decisions, and indicating the penalties imposed and the facts giving rise to the convictions.***

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

## United Kingdom of Great Britain and Northern Ireland

### **Forced Labour Convention, 1930 (No. 29)** (ratification: 1931) and **Protocol of 2014** (ratification: 2016)

The Committee notes the information provided by the Government in its 2019 report as well as the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee also notes the observations of the Trades Union Congress (TUC), received on 30 August 2019, and the Government's reply to those observations, received on 12 November 2019. It notes that the TUC sent supplementary information on 1 October 2020.

Recalling that in January 2016 the United Kingdom of Great Britain and Northern Ireland ratified the Protocol of 2014 to the Forced Labour Convention, 1930, the Committee observes that the Government has not provided a detailed report on the application of its provisions. ***The Committee requests the Government to provide in its next report information on the questions raised below as well as on measures taken to implement each provision of the Protocol***.

*Articles 1(1), 2(1) and 25 of the Convention. Suppressing all forms of forced labour, including trafficking in persons.* 1. *National strategies*. In its previous comments, the Committee noted with interest the measures taken to strengthen the legislative and institutional framework to combat all forms of forced labour and encouraged the Government to pursue its efforts and provide information on the implementation of the various strategies adopted. The Committee notes the Government's indication that in July 2018, it commissioned an Independent Review of the Modern Slavery Act 2015. The Government has accepted or partially accepted the majority of the recommendations contained in the final report. Among the measures taken, the Government indicates that it is considering how to strengthen the independence of the Independent Anti-Slavery Commissioner (IASC), which has among its tasks to prepare a new strategic plan. The Committee also notes that the Government publishes annual reports on progress made on tackling slavery. According to these reports, the Government agrees that improving

evidence of the scale and nature of modern slavery is a priority, considering that this is a complex and largely hidden crime. The Government established the Modern Slavery Policy and Evidence Centre in autumn 2019, which commissioned new research to enhance the evidence-based reports on modern slavery and improve understanding thereof.

In relation to Scotland, the Committee notes the publication of annual progress reports on the implementation of the Human Trafficking and Exploitation Strategy adopted in May 2017. The strategy covers three areas: victim identification and support; identification of perpetrators and disruption of their activities; and root causes of trafficking and exploitation. According to the 2020 UK Annual Report on modern slavery, while the Strategy was considered fit for purpose, the Scottish Government is committed to working with all partners and other interests to develop a revised and updated Strategy.

The Committee notes that in Northern Ireland, the Department of Justice developed in partnership with statutory organizations and NGOs, its third Modern Slavery Strategy for 2019–2020 around three key themes: pursue, protect and prevent. The Committee observes that the Organized Crime Task Force (OCTF) regularly monitors progress made and documents results in its annual reports. The Government also indicates that the OCTF provides a strategic partnership forum and helps to develop strong relationships between statutory partners to address modern slavery.

The Committee welcomes the measures taken to continue to develop national strategies to address all forms of forced labour, and to assess regularly the impact of the measures taken. ***The Committee requests the Government to indicate whether the Independent Anti-Slavery Commissioner (IASC) has adopted a new strategic plan and, if so, to provide information on the measures envisaged and the steps taken for their implementation. It also requests the Government to provide information on any revised strategy adopted for Northern Ireland and Scotland. The Committee requests the Government to provide detailed and concrete information on the results of the regular assessments of these strategies, the obstacles identified and the measures taken to overcome them. It requests the Government to indicate the manner in which the social partners are consulted on the development and implementation of the strategies.***

2. *Measures to support due diligence to prevent and respond to risks of forced labour*. In its previous comments, the Committee noted that under the Modern Slavery Act 2015, certain commercial organizations must disclose a slavery and human trafficking statement for each financial year indicating what they are doing to eradicate modern slavery from their organizations and their supply chains. The Committee notes that while welcoming this provision, the TUC considers that its application has not resulted in sufficient or quality statements. Companies can report that they have taken no steps to combat modern slavery. In relation to public procurement, the TUC indicates that the Government should be using the huge leverage of the public sector buying to raise the level of due diligence on human rights across the board, by ensuring that negligent companies cannot access procurement contracts.

In its reply, the Government indicates that it has put in place a central reporting service for annual transparency in supply chain statements; extended the transparency requirements to the public sector; and developed tools and guidance to support how public bodies conduct modern slavery due diligence. Under the Public Contracts Regulations 2015, bidders for public contracts who have been convicted of child labour or human trafficking offences under the Modern Slavery Act within the last 5 years must be excluded from public procurements. In March 2020, the first Government Modern Slavery Statement was published, which outlines the steps undertaken to drive responsible practices and prevent risks in Government supply chains. ***The Committee requests the Government to continue to provide information on the steps taken to support companies and public bodies to take measures to identify, prevent, mitigate and account for how they address the risks of forced labour in their operations or in products or services to which they may be directly linked.***

3. *Identification and protection of victims.* The Committee notes that according to the 2020 UK Annual Report on modern slavery, in 2019, there were 10,627 potential victims referred to the national referral mechanism (NRM) by first responders (a 52 per cent increase from 2018). Victims came mainly from the United Kingdom, Albania, Vietnam, China and India. The most common reported exploitation type was labour exploitation (52 per cent), followed by sexual exploitation (33 per cent). According to the report, the increase in NRM referrals is likely to be indicative of greater awareness of the NRM and improved law enforcement activity. The Committee notes the Government's indication that in Scotland, regulations have set to 90 days the period during which the provision of support and assistance to adult victims is considered necessary, taking into account the victims' needs. It also notes the funding agreements concluded with NGOs in Scotland and Northern Ireland for the provision of material assistance and medical support to a growing number of victims (from 158 victims in 2016-2017 to 251 in 2018-2019 in Scotland; and from 20 to 38 in Northern Ireland for the same period).

The Committee notes that, in its observations, the TUC indicates that first responder organizations that refer victims to the NRM receive insufficient training on the identification and support of victims, and on the different steps of the NRM process. The TUC refers in particular to the process for reviewing negative decisions concerning the status of a victim (reasonable grounds decisions and conclusive

grounds decisions). The TUC also refers to barriers in access to compensation, and emphasizes that assistance provided to victims should not be linked to a definite timeframe but rather respond to their needs.

The Committee notes that in its reply, the Government indicates that it has started a multi-agency review to identify what training first responders should receive and how it should be delivered. It also states that the Home Office is embarking on an ambitious NRM Transformation Programme to improve the decision-making process, and address the challenges faced in delivering needs-based support for victims.

***The Committee requests the Government to provide information on the results achieved by the NRM Transformation Programme and on the measures taken to ensure that assistance and support is provided as soon as there are reasonable grounds to believe that a person is a victim of modern slavery and that this support is provided over a sufficient period of time for their recovery and rehabilitation. It requests the Government provide specific information on the number of victims who have benefitted from the different types of assistance (medical, psychological, material and legal support as well as temporary resident or work permits). The Committee also requests the Government to communicate statistics on the number of persons referred to the NRM, the number of negative reasonable or conclusive grounds decisions and the number of such decisions that have been reviewed by the competent authority.***

4. *Protection of migrant workers from possible abusive and fraudulent practices.* The Committee notes that in its observation, the TUC indicates that the Government is planning to introduce a number of temporary sector specific migration programmes for EEA and non EEA workers. The TUC alleges that such sector specific visas present high risks for migrant workers by providing them an insecure status and requests the Government to ensure that the schemes adopted will be designed to create resilience to exploitation. The Committee also notes that the TUC indicates that analysis of government enforcement agencies shows that bodies tasked with protecting victims of modern slavery are also sharing information on their immigration status. The TUC expresses concern at this practice of reporting information on status by labour inspectors, which undermines the aims of victim identification, prevention of modern slavery and prosecutions. The Committee recalls in this regard that according to *Article 4 of the Protocol* all victims of forced labour, irrespective of their legal status in the national territory, shall have access to appropriate and effective remedies, such as compensation. ***The Committee requests the Government to provide its reply to the TUC's observations and to indicate the measures taken to ensure that migrant workers are not placed in a position of accrued vulnerability to exploitation, are protected from abusive practices, have knowledge of their rights and have effective access to justice.***

5. *Law enforcement*. The Committee takes note of the information provided by the Government on the measures taken to continue to improve awareness, training and capacities of frontline police officers and prosecutors, including through the Modern Slavery Police Transformation Programme in England and Wales; the appointment of a National Lead Prosecutor for Human Trafficking in Scotland; the issuance of guidance on identification and reporting of potential victims for frontline officers and the installation of specialized teams in the Public Prosecution Service (PPS) and the Police Service of Northern Ireland (PSNI). The Committee observes that, according to the 2020 UK Annual Report on Modern Slavery, in June 2020, there were 1,845 active law enforcement investigations, compared with 1,479 in June 2019. The number of prosecutions and convictions have also increased in England and Wales. The Committee notes that in Northern Ireland, the PSNI appoints a financial investigator for all modern slavery and human trafficking investigations and the assets of every potential suspect are considered for seizure. The Government also refers to the first two human trafficking convictions under the new Northern Ireland legislation, emphasizing that these cases did not rely on evidence provided by victims since no potential victims entered the NRM process pre-conviction. The Committee also notes the Government's indication that new legislation has broadened the remit and strengthened the powers of the Gangmasters and Labour Abuse Authority (GLAA) which has investigated serious cases of labour exploitation across the entire economy in partnership with other enforcement bodies (the Employment Agency Standards (EAS) and the HMRC National Minimum Wage (NMW)).

***The Committee encourages the Government to continue to strengthen the capacity of law enforcement bodies to properly identify and address situations of forced labour so that cases may be successfully prosecuted and effective and dissuasive sanctions imposed on perpetrators. It requests the Government to continue to provide information on the number of investigations, prosecutions and convictions. The Committee also requests the Government to provide more detailed information on the confiscation of assets of perpetrators as well as on slavery and trafficking reparation orders against offenders to compensate the victims.***

*Article (2)(2)(c). Privatization of prisons and prison labour. Work of prisoners for private companies*. For a number of years, the Committee has been requesting the Government to take the necessary measures to ensure that formal, freely given and informed consent is required for the work of prisoners in privately operated prisons, as well as for all work of prisoners for private companies, both inside and outside prison premises.

The Committee notes the Government's indication in its report that it continues to have in place a robust set of rules and regulations that ensure prisoner labour is not abused. The Government reiterates that it believes that work in prisons falls within the second exception in the Convention by ensuring public sector supervision of prison work carried out in both public and private sector prisons by means of: retaining rehabilitation as the primary purpose of the work; rigorous, independent inspections of both public and private sector prisons and workshops; the strong legislative framework that protects working conditions of prisoners; and their access to effective systems for complaints. The Government adds that work in prisons is a key part of successful prison whether public or private sectors operate it. It serves a number of important functions: providing prisoners with a purposeful activity; giving structure and meaning to prisoners' days; contributing to improving prisoners' mental and physical health; and most importantly, preparing prisoners for employment on release. The Government indicates that its flexible approach has enabled it to access new and innovative markets and to work with customers in novel ways, including employers opening employment academies in prison. The Government reiterates that it is keen to continually grow the number of employers who can provide valuable vocational work for offenders while in prison and who are able to offer them support in preparation for release and employment opportunities following their release.

While acknowledging the objective of rehabilitation pursued by the Government in providing work to convicted prisoners, the Committee is bound to reiterate that the privatization of prison labour exceeds the express conditions provided in *Article 2(2)(c)* of the Convention for exempting compulsory prison labour from the scope of the Convention. The Committee has already pointed out that *Article 2(2)(c)* expressly prohibits that convicted prisoners are hired to or placed at the disposal of private individuals, companies or associations, in the sense that the exception from the scope of the Convention provided for in this Article for compulsory prison labour does not extend to work of prisoners for private employers (including privatized prisons and prison workshops), even under public supervision and control. Thus, to be compatible with the Convention, the work of prisoners for private companies must not involve compulsion. It must require the formal, freely given and informed consent of the persons concerned, as well as further guarantees and safeguards covering the essential elements of a labour relationship, such as the level of wages, the extent of social security, and the application of regulations on safety and health. As the Committee has repeatedly pointed out, in spite of the express prohibition for prisoners to be hired to or placed at the disposal of private parties under the terms of the Convention, it is nevertheless fully possible for governments to apply the Convention when designing or implementing a system of privatized prison labour, once the above-mentioned requirements are complied with. ***Therefore, the Committee once again urges the Government to take the necessary measures to ensure that formal, freely given and informed consent is required for the work of prisoners in privately operated prisons, as well as for all work of prisoners for private companies, both inside and outside prison premises, with such consent being authenticated by the conditions of work approximating those of a free labour relationship.***

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

## United Republic of Tanzania

### Forced Labour Convention, 1930 (No. 29) (ratification: 1962)

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Penalties and law enforcement.* The Committee previously noted that pursuant to section 4 of the Anti-Trafficking in Persons Act (No. 6 of 2008), trafficking in persons is an offence, punishable with a fine of between 5 million Tanzanian shillings (TZS) and TZS100 million (approximately US$3,172–$63,577), *or* to imprisonment for a term of not less than two years and not more than ten years, or both. Pursuant to section 5 of the Act, a person who promotes, procures or facilitates the commission of trafficking in persons commits an offence, and is liable to a fine of between TZS2 million and TZS50 million (approximately US$1,272–US$31,083), *or* to imprisonment for a term of not less than one year, but not more than seven years, or both. The Committee, however, noted from the Government's replies to the list of issues of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in February 2015, an instance where an Indian national who was convicted of trafficking eight Nepalese girls was sentenced to ten years' imprisonment or to pay a fine of TZS15 million. The perpetrator paid the fine and was released (CEDAW/C/TZA/Q/7-8/Add.1, paragraph 84). Referring to paragraph 319 of the 2012 General Survey on the fundamental Conventions, the Committee recalled that, when the sanction consists only of a fine or a very short prison sentence, it does not constitute an effective sanction in light of the seriousness of the violation and the fact that the sanctions need to be dissuasive. The Committee therefore requested the Government to take the necessary measures to ensure that the Anti-Trafficking in Persons Act was applied effectively so that sufficiently effective and dissuasive penalties of imprisonment are imposed and enforced in practice in all cases and to continue providing information on its application in practice.

The Committee notes the Government's indication in its report that one of the recommendations that came up during the National Dialogue with key stakeholders convened in July 2018 was to review the

provisions relating to penalties under the Anti-Trafficking in Persons Act and also to include the provision of "attempt" as one of the grounds in establishing the crime of trafficking during prosecution. The Committee further notes the Government's information that from 2016 to 2018, 76 cases of trafficking in persons were reported, 50 cases were investigated and 60 persons were convicted. However, the Government report does not provide information on the penalties imposed on the persons convicted for the offences related to trafficking in persons. ***In this regard, the Committee requests the Government to take the necessary measures to ensure that in practice, sufficiently effective and dissuasive penalties are imposed and enforced against perpetrators in all cases related to the trafficking of persons. It also requests the Government to continue to provide information on the number of investigations, prosecutions and convictions related to trafficking in persons, as well as the specific penalties applied to those convicted. The Committee further requests the Government to provide information on any progress made with regard to the revision of the Anti-Trafficking Act.***

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

## Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

*Imprisonment involving an obligation to work.* In its previous comments, the Committee had noted the Government's repeated statement that imprisonment does not involve an obligation to perform work by virtue of Part XI of the Prison Act of 1967, including in Zanzibar. However, the Committee noted that, pursuant to section 61 of the Prison Act, every prisoner sentenced to imprisonment and detained in prison shall be employed in such a manner as the Commissioner may determine, and for that purpose such prisoner shall, at all times, perform such labour, tasks and other duties as may be assigned to him/her by the officer-in-charge or any other prison officer in whose charge he/she may be. Section 50 of the Offenders Education Act of 1980 of Zanzibar contains the same provision. The Committee observed that prisoners are required to perform labour as determined by the Commissioner and assigned to him/her by the prison officer and that the consent of the prisoner is not required by both the laws. Therefore the following provisions referred to by the Committee, of which the violation is punishable by imprisonment, fall within the scope of the Convention.

*Article 1(a) of the Convention. Penalties involving compulsory labour as a punishment for the expression of political views.* 1. *Media.* In its previous comments, the Committee noted with regret that the Media Services Act No. 12 of 2016, which repealed the Newspapers Act of 1976 under Part VII on Offences and Penalties, established penalties of imprisonment for the violation of the Act. It noted that the relevant provisions are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of political views or views opposed to the established political, social or economic system. These provisions include:

- Section 50, which provides that any person who makes use by any means of a media service for the purpose of publishing information which intentionally or recklessly falsified in a manner which, or any statement the content of which, threatens the interests of defence, public order, the economic interests of the country, public morality or public health, commits an offence and is punishable by three to five years' imprisonment.
- Section 51, which provides that any persons who imports, publishes, sells, offers for sale, distributes or produces any publication or any extract of it, the importation of which is prohibited, commits an offence and is punishable by three to five years' imprisonment for the first offence, and five to ten years' imprisonment for a subsequent offence.
- Sections 52 and 53, which provide that any act, speech or publication with a seditious intention, including the sales, distribution, reproduction and importation of such publication, is punishable by three to five years' imprisonment for the first offence, and five to ten years' imprisonment for a subsequent offence. The possession of such publication is punishable by two to five years' imprisonment for the first offence, and three to ten years' imprisonment for a subsequent offence.
- Section 54, which provides that any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace commits an offence and is punishable by four to six years' imprisonment.

The Committee also noted that, according to the statement of the United Nations Country Team with regard to the Universal Periodic Review on Tanzania in 2015, since the Media Services Act stipulates that no person will be allowed to practice journalism unless accredited by the journalist accreditation board, its enactment will lead to the suppression of citizen journalists and other volunteer journalists working with community radio stations (A/HRC/WG.6/25/TZA/2, paragraph 40). The Committee requested the Government to take the necessary measures to amend the provisions of the Media Services Act No.12 of 2016 so as to bring them into conformity with the provisions of the Convention.

The Committee notes an absence of information in the Government's report on this point. The Committee observes that the United Nations Human Rights Office of the High Commissioner published a number of news releases in 2020 on the situation of civil liberties in Tanzania. The Committee notes in particular that in a news release of 22 July 2020, three Special Rapporteurs referred to evidence illustrating

the deterioration of the human rights situation since 2016, when political gatherings by opposition groups were barred with repeated arrests of opposition members, activists and critics. They observed that there exists a string of newly enacted legislation used to intimidate human rights defenders, silence independent journalism and further restrict freedoms of expression, peaceful assembly and association. In its news release of 17 March 2020, "Tanzania: Opposition sentences highlight continued stifling of freedoms", the United Nations Human Rights Office of the High Commissioner referred to the recent sentencing of eight senior members and one former senior leader of Tanzania's main opposition party, on charges including sedition and unlawful assembly, as a "troubling evidence of the crackdown on dissent and the stifling of public freedoms in the country".

The Committee takes note of this information with ***concern. It expresses the firm hope that the Government will take the necessary measures to amend the above-mentioned provisions of the Media Services Act No. 12 of 2016 and ensure that persons expressing political views or views opposed to the established political, social or economic system are not subject to penalties of imprisonment involving compulsory labour, whether by restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee once again requests the Government to provide information on the application of the above-mentioned provisions, including any prosecutions conducted or court decisions handed down, and the penalties imposed.***

2. *Meetings, assemblies and organizations. Non-governmental Organizations Act.* The Committee previously noted that section 11 of the Non-Governmental Organizations (NGO) Act of 2002 requires all NGOs to apply for registration with the registrar and that, pursuant to section 13(3), this application for registration may be approved or refused. Section 14(1) of the Act provides that the registration of an NGO may be refused if, inter alia, the activities of an NGO are not for the public interest or on the recommendation of the National Council for NGOs. Section 35 of the Act provides for penalties of a fine or imprisonment (involving compulsory labour) for a term not exceeding one year, or both, for the offences of, inter alia, operating an NGO without obtaining registration. The Committee noted the Government's statement that no convictions were made under section 35 of the NGO Act and that certain provisions of the NGO Act relating to the registration of NGOs had been ruled unconstitutional by the High Court. With reference to paragraph 302 of the General Survey on the fundamental Conventions, 2012, the Committee once again recalled that, under *Article 1(a)* of the Convention, the range of activities that must be protected from punishment involving compulsory labour comprises the freedom to express political or ideological views as well as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views.

The Committee notes that the Government's report does not contain any information in this regard. ***The Committee once again requests the Government to take the necessary measures to ensure that the above-mentioned provisions of the NGO Act are not applied in a manner which could result in the imposition of penalties of imprisonment, involving compulsory labour, to persons who hold or express political views or views opposed to the established system.***

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

## United States of America

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1991)

*Article 1(d) of the Convention. Sanctions involving compulsory labour for participation in strikes.* In its previous comments, the Committee noted that, pursuant to article 12, section 95-98.1, of the North Carolina General Statutes, strikes by public employees are declared illegal and against the public policy of the State. Persons who violate article 12 may be subject to "community punishment" and, upon a second conviction to imprisonment (section 95–99 of the North Carolina General Statutes; section 15A-1340.11 and section 15A-1340.23 of chapter 15A (Criminal Procedure Act)). The Committee also noted that the imposition of community punishment may include assignment to the State's Community Service Work Programme, and that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them (article 3, section 148-26, of chapter 148 (State Prison System)). The Committee further noted that the observations of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) according to which, as sections 95–98.1 and 95–99 might have a chilling effect on public sector workers who might otherwise decide to engage in strikes, these provisions should be repealed or amended.

The Committee once again notes the Government's indication in its report that State court records continue to be devoid of any instance in which an individual has been convicted of engaging in an unlawful public-sector strike. In the unlikely event that an individual were to be so convicted, North Carolina law would not require the judge to order the public sector employee to perform work in violation of the Convention. The judge would have discretion to impose only a fine.

Observing that it has been raising this issue for more than a decade, the Committee must once again recall that *Article 1(d)* of the Convention prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes. Referring to the explanations contained in paragraph 315 of its 2012 General Survey on the fundamental Conventions, the Committee recalls that, regardless of the legality of the strike action, any sanctions imposed should not be disproportionate to the seriousness of the violations committed, and that in both legislation and practice, no sanctions involving compulsory labour should be imposed for the mere fact of organizing or peacefully participating in strikes. ***The Committee therefore once again requests the Government to take the necessary measures to bring the North Carolina General Statutes into conformity with both the Convention and the indicated practice, by ensuring the repeal or amendment of sections 95–98.1 and 95–99, so as to ensure that penalties of compulsory labour (through the Community Service Work Programme or during imprisonment) cannot be imposed for participation in a strike.***

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

## Uruguay

### Forced Labour Convention, 1930 (No. 29) (ratification: 1995)

The Committee takes note of the Government's report received in 2019 as well as the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Article 2(2)(c). Work exacted as a consequence of a conviction in a court of law. Prison labour.* 1. *Legislative developments.* The Committee previously noted that according to Legislative Decree No. 14.470 regulating conditions of imprisonment, convicted prisoners have an obligation to work and that in certain special circumstances the prison authority may conclude an agreement with public or private organizations concerning the use of prison labour and of prison workshops (sections 41 and 44). It noted that such agreements had been concluded since the Government indicated that a number of prisoners were working for private enterprises. In that regard, the Committee also noted the Government's statement that, despite the above-mentioned provisions, work in prison is voluntary, and that according to the provisions of paragraph 65 of Decree No. 225/006 of 13 July 2006, before starting any work, convicted prisoners must give their consent in writing.

The Committee notes the adoption of Act No. 19.889 on urgent consideration (*Ley de Urgente Consideración* (LUC)) of 9 July 2020 which amends section 41 of Decree No. 14.470 and provides that: (i) convicted prisoners have an obligation to work, and (ii) the failure of convicted prisoners to comply with such an obligation will not be penalized by the removal of rights but will entail the reduction of their benefits as determined by regulations. The Committee notes that not only does the newly amended section 41 of Decree No. 14.470 provide for an obligation to work of convicted prisoners, but it also provides that convicted prisoners who refuse to work can be punished by reducing their benefits, thereby amounting to a "menace of a penalty" under the terms of the Convention. In that regard, the Committee recalls that work by prisoners for private enterprises can be held compatible with the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, by giving their free, formal and informed consent and without being subjected to pressure or the menace of any penalty, including the loss of a right or a privilege (advantage), and that this work is performed under conditions which approximate a free labour relationship (see 2012 General Survey on the fundamental Conventions, paragraphs 279 and 291).

***In light of the above considerations, the Committee trusts that the Government will take the necessary measures to ensure that, both in legislation and in practice, prisoners carrying out work for private entities, as provided under section 44 of Legislative Decree No 14.470, do so only with their free, formal and informed consent, and that the conditions of such work approximate those of a free labour relationship. It requests the Government to provide information on any progress made in that regard. In the meantime, the Committee requests the Government to provide information on the interplay of new section 41 of Legislative Decree No. 14.470 with other regulations on prison labour, in particular paragraph 65 of Decree No. 225/006.***

2. *Prison labour in the framework of public–private partnerships.* The Committee previously noted that, following a call for tenders in December 2012, a prison was under construction in the context of a public–private partnership for the first time in Uruguay. It requested the Government to indicate whether the issue of labour by prisoners was covered in the public–private partnership contract, and to indicate whether the private entity selected to finance and construct the prison was required to fulfil certain obligations in relation to the provision and management of prison labour.

The Committee notes the Government's statement, in its report, that neither the call for tenders nor the public–private partnership contract contain any provision or obligation concerning the issue of work by prisoners. Noting that the above-mentioned prison, Unit No. 1 of Punta de Rieles, was inaugurated in January 2018, the Committee notes the Government's statement that prisoners work in internal services

and maintenance activities within the establishment. The Government refers to several documents containing information on the consent, remuneration and conditions of work by prisoners which were not attached to its report, namely: (i) model contracts signed with a private entity regulating the work of prisoners within Unit No. 1; (ii) labour regulations for prisoners who work for the private entity; and (iii) a code of conduct for prisoners who work for the private entity. The Government adds that the authority responsible for monitoring the compliance with the public–private partnership contract requests monthly information on the obligations regarding work which are applicable to all persons working within the prison, regardless of whether they are prisoners or not. ***The Committee refers to its above comments underlining the need to ensure that prisoners carrying out work for private entities give their free, formal and informed consent to work, and requests the Government to provide detailed information on the manner in which prisoners express interest and give consent to work within the framework of the public–private partnership. The Committee requests the Government to provide information on the remuneration and conditions of work of these workers, and to communicate any relevant document available in this regard, including the model contracts, the labour regulations and the code of conduct referred to above. The Committee also requests the Government to provide information on the content of the monthly information on the obligations regarding work within the prison collected by the authority responsible for monitoring the compliance with the public–private partnership contract.***

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

## Uzbekistan

### Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) received on 8 October 2020. Not having received other supplementary information from the Government, the Committee repeats its comments adopted in 2019 and reproduced below.

The Committee also notes the observations of the IUF received on 30 August 2019.

*Article 1(b) of the Convention. Mobilization and use of labour for purposes of economic development in agriculture (cotton production).* In its previous comments, the Committee noted the allegations made by the IUF that the Government of Uzbekistan continued to impose a state system of forced labour for the economic purpose of producing cotton. It also noted the International Trade Union Confederation's (ITUC) observations that there were a number of cases of involuntary engagement of workers as well as cases of extortion for replacement payments by local authorities which needed to be investigated and prosecuted. In this regard, the Committee noted the information provided by the Council of the Federation of Trade Unions of Uzbekistan (CFTUU) on the various measures taken within the framework of cooperation between Uzbekistan, the ILO and the World Bank for the implementation of ILO Conventions on child and forced labour in 2016, including training courses and seminars on international labour standards and their implementation for employees of ministries, departments, NGOs and farmers; awareness-raising campaigns against child and forced labour; and monitoring and implementation of the Feedback Mechanism (FBM). Moreover, at a round table discussion held in Tashkent and entitled "Status and Prospects for Cooperation between Uzbekistan and the ILO" all the participants, including representatives of the ILO, IOE, ITUC, World Bank, UNDP, UNICEF and diplomatic representatives expressed their commitment and willingness to cooperate closely with Uzbekistan.

The Committee further noted the results of the ILO quantitative survey on employment practices in the agricultural sector conducted by the research centre *(Ekspecrt fikri)* which indicated a decrease in the number of cotton pickers from 3.2 million in 2014 to 2.8 million in 2015; an increase in the number of voluntary participants in the 2015 cotton harvest; and a decrease in the number of medical employees, educational workers and students among the cotton pickers. The Committee finally noted from the report of the ILO, Third Party Monitoring and Assessment of Measures to Reduce the Risk of Child Labour and Forced Labour during the 2016 cotton harvest (TPM report) that since the 2015 harvest, the Government had made further commitments against child and forced labour, especially within the Action Plan for Improving Labour Conditions, Employment and Social Protection of Workers in the Agricultural Sector 2016–2018. Several training workshops to build the capacity of officials, including *Hokims* (regional governors), were conducted before the harvest with ministries, organizations and entities involved at all levels. Public awareness campaigns during the harvest reached remote villages, and messages on child and forced labour, on labour rights, and on the FBM hotline were distributed nationwide. Referring to the preliminary results of the ILO quantitative survey, the TPM report indicated that of the 2.8 million cotton pickers in 2015, a significant number, about two-thirds, were recruited voluntarily and that those "at risk" of involuntary work were mainly from the education sector, medical staff and students. The TPM report indicated that the monitoring teams, led by ILO experts, who visited 50 medical care facilities found that they were functioning normally during the harvest and that the staff attendance were usually monitored. The TPM report further indicated that while the unacceptability of child labour were recognized by all

segments of society, awareness on risks of forced labour needed to be improved. The TPM report concluded that while important measures had been introduced for the voluntary recruitment of cotton pickers, they were not robust enough to decisively change the recruitment practices. Referring to the recommendations indicated in the TPM report to reduce the risk of forced labour in the cotton harvest, the Committee strongly encouraged the Government to continue to take effective and time-bound measures to strengthen safeguards against the use of forced labour in the cotton harvest, including through strengthening a functioning labour relations system for cotton pickers, developing a high-quality training strategy for all actors involved in the cotton harvest and continuing to raise awareness among all segments of society about the risks of forced labour in the cotton harvest.

The Committee notes the observations made by the IUF that the mobilization and use of labour for economic development in agriculture and to an extent in other sectors, remains a massive, systematic, ubiquitous and truly nationwide practice involving military personnel and servicemen, doctors, teachers, employees of state enterprises and other workers.

The Committee notes the Government's information in its report on the various legislative measures taken, including amendments and additions to the existing laws as well as adoption of new laws to improve the working and employment conditions in agriculture and to bring them into compliance with the fundamental standards and norms. In this regard, the Committee notes the Government's reference to the following measures taken:

- Act No. ZRU-558 of August 2019 on insertion of amendments and additions to several pieces of legislation, including section 51 of the Administrative Liability Code, thereby stiffening the penalties for coercion to work and the engagement of children in forced labour;
- Order No. 197-ICh of the Ministry of Employment and Labour Relations (MELR) of 13 August 2019 on increasing the number of city and district state legal labour inspectors of the State Labour Inspectorate;
- Resolution No. 349 of the Cabinet of Ministers of 10 May 2018 on additional measures to eliminate forced labour through mandating the heads of state and economic administrative bodies at all levels to respond effectively to and stop the exaction of all types of forced labour from individuals, in particular, educational and healthcare workers, pupils, and employees of other public sector organizations, and to impose strict disciplinary measures against officials who directly or indirectly commit or allow the exaction of forced labour;
- Presidential Edict No. UP-5563 of 29 October 2018 on increasing the responsibility of heads of state bodies at all levels for prohibiting and eliminating forced labour in all its forms and manifestations;
- Resolution No. 799 of the Cabinet of Ministers of October 2017 on the organization of the operations of the Community Work Fund of the MELR with the aim of prohibiting forced labour by engaging individuals in paid community work.

The Government also indicates that notices regarding the prohibition of child labour and forced labour have been displayed in all localities, in healthcare and educational institutions and state organizations. Wide-scale campaigns on penalties for breaching the prohibition of child labour and forced labour have been conducted. With the assistance of the ILO, in 2018, 400 banners and 100,000 flyers on the prohibition of forced labour were distributed and placed in visible locations across the country. A short film on the FBM on forced labour was broadcasted on television. Tangible organizational and financial steps have been taken with a view to recruiting workers voluntarily for the cotton harvest. The Committee further notes the Government's information regarding the reports on forced labour received by the FBM through a messaging service Telegram and a telephone hotline. According to this database, in 2016 and 2017, no more than 15 reports were received, in 2018, 2,135 reports were received. The state labour inspectors examined all the reports and in 284 cases concerning the use of forced labour, administrative penalties were imposed on persons forcing employees to pick cotton, including heads of the tax inspectorates and heads of the region, local council and local administrations *(hokims).* Orders were sent to 250 organizations to remedy breaches of the labour law and occupational safety and health; 50 representations were sent to heads of organizations; and a warning was sent to the Ministry of Defence. Disciplinary proceedings were brought against over 100 directors of comprehensive socio-economic development zones, 30 of them were dismissed from their posts, and 11 *hokims* were fined. Moreover, the Committee notes from the Government's report that the ILO Decent Work Country Programme (DWCP) has been extended to 2020.

The Committee notes with ***interest*** from the report of the ILO, Third Party Monitoring of child labour and forced labour during the 2018 cotton harvest (TPM report of 2018) that Uzbekistan has demonstrated major progress in the eradication of forced labour in the cotton harvest of 2018. Forced labour was reduced by 48 per cent compared to 2017. According to this report, there is a continued strong political commitment and clear communications from the Government of Uzbekistan to eradicate forced labour. The Committee also notes the following positive developments and results achieved in 2018 as reflected in the TPM report:

– Systematic forced labour (refers to a situation of forced labour imposed by the Government in a methodical and organized manner) was not exacted by the Government during the 2018 cotton harvest;
– The prohibition on recruiting students, teachers, nurses and doctors was systematically implemented and generally observed at the local level;
– Wages were increased by up to 85 per cent compared to the previous harvest and cotton pickers were paid on time and in full;
– Media started reporting actively on forced labour. Journalists were encouraged by the Government to cover forced labour issues. Local independent human rights activists were free to conduct their monitoring activities;
– Labour inspectorate was strengthened with 200 inspectors receiving training by the ILO on forced labour investigations and were deployed throughout the country to investigate alleged forced labour cases; and
– Over 2,000 cases of forced labour were investigated and 206 *hokims*, officials and managers were sanctioned for forced labour violations, leading to fines, demotions and dismissals.

The Committee takes due note of the measures taken by the Government and their impact on reducing the number of cases of forced labour in cotton farming. It notes however from the TPM report of 2018 that while a vast majority of pickers are not in forced labour, there are still a considerable number of cases of forced labour (6.8 per cent or 170,000 people) mainly because the legacy of the centrally planned agriculture and economy (centrally set quotas) is still conducive to the exaction of forced labour. The TPM report states that although reforms announced by the central Government have had an impact, the uneven implementation of national policies, especially at the local level remains a challenge. ***The Committee therefore strongly encourages the Government to continue its efforts, including through its cooperation with the ILO and the social partners, within the framework of the DWCP, to ensure the complete elimination of the use of forced labour in cotton farming through the effective implementation of its policies at the local level. It requests the Government to continue to provide information on the measures taken to this end and the concrete results achieved, with an indication of the sanctions applied.***

The Committee is raising other matters in a request addressed directly to the Government which reiterates the content of its previous request adopted in 2019.

## Bolivarian Republic of Venezuela

### Forced Labour Convention, 1930 (No. 29) (ratification: 1944)

The Committee notes the observations received from the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) on 31 August 2017, the Confederation of Workers of Venezuela (CTV) on 11 December 2019; the Federation of University Teachers' Associations of Venezuela (FAPUV) and the Independent Trade Union Alliance Confederation of Workers (CTASI) on 11 September 2020; and the CTASI on 30 September 2020. ***The Committee requests the Government to provide its reply to these observations.***

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Trafficking in persons. Massive migration flows.* The Committee notes that, in their observations, the CTV, FAPUV and CTASI highlight that trafficking in persons in the country has increased as a result of the situation of humanitarian emergency faced by the country which resulted in the generalization of poverty for an increasing number of persons, mainly children and young people in situations of economic vulnerability, falling victim to exploitation by criminal groups within the country or forced to migrate. In this regard, the Committee notes that, the number of people who have left the Bolivarian Republic of Venezuela has increased dramatically since 2018 to reach, according to official statistics, more than five million persons to date. The Committee notes that, as recently highlighted by several United Nations bodies: (i) Venezuelan migrants face obstacles in obtaining or legalizing documentation which is a source of challenges in transit and destination countries which makes them particularly vulnerable to trafficking for labour and sexual exploitation purposes; (ii) those who are leaving or re-entering the Bolivarian Republic of Venezuela are often victims of extortion and illegal requisitions especially at the hands of the Bolivarian National Guard; and (iii) border closures and additional requirements to travel to transit and destination countries force migrants to use unofficial crossing points and therefore increase their risk of suffering abuses (A/HRC/41/18, 9 October 2019, paragraphs 69, 72 and 73; A/HRC/RES/42/25, 8 October 2019, preamble and paragraph 18; and webpage of the United Nations Refugee Agency, Venezuela situation, 2020). ***Taking into consideration the current situation of humanitarian emergency faced by the country and the increased number of persons who may be exposed to trafficking within the country as well as in transit and destination countries, the Committee draws the Government's attention to the need for specific and appropriate measures to be taken to ensure that the necessary safeguards are in place at national level, so that the current situation and the actions taken as a result by the national authorities do not contribute, directly or indirectly, to a subsequent increase in cases of trafficking in persons within the country or for Venezuelan migrant***

***workers. It requests the Government to provide information on the specific measures developed and implemented in this regard, including within the framework of bilateral agreements with host countries.***

*Legislative and institutional framework.* The Committee previously noted that several legislative texts contain provisions regarding trafficking in persons (section 56 of the Basic Act of 2007 on the right of women to a life free from violence and sections 53, 56 and 57 the Act of 2004 on foreigners and migration) and more particularly the Basic Act of 2012 against organized crime and the funding of terrorism which criminalizes trafficking in persons under its section 41, while limiting the offence of trafficking to perpetrators who are part of an organized criminal organization. It further noted that a Bill against trafficking in persons was under examination and that various discussions were held by the Government with a view to drawing up the strategies to be set out in the National Plan to combat trafficking in persons around three priorities: prevention, investigation and penalties, and the protection of victims. It noted that the establishment of a presidential commission to combat trafficking in persons was also under examination. The Committee requested the Government to provide information on any progress made in that regard, and more particularly on the adoption and implementation of the national plan and the establishment of a coordinating body. The Committee notes the Government's general indication, in its report, that the National Plan to combat trafficking in persons for 2016–2019 has been updated for the period 2020–2023. It notes that, in its observations, the CTV expresses concern at the lack of information from the Government on the impact of the National Plan for 2016–2019, as well as on any policy or measures implemented to combat trafficking in persons. The CTV further refers to the increasing number of victims of trafficking for sexual exploitation at the border with the Caribbean islands, as well as in the illegal mining sector in the state of Bolívar, in particular in the *Arco Minero del Orinoco* (AMO) where women and girls from indigenous communities are victims of sexual exploitation and domestic servitude. The Committee notes that, in their joint observations, the FAPUV and CTASI highlight the lack of legislative provisions against trafficking in persons and the insufficient actions implemented by the Government in that area. They also refer to cases of persons exposed to various forms of coercion in illegal mines by armed groups operating with impunity. In this regard, the Committee notes that, in her 2020 report on the independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the AMO region, the United Nations High Commissioner for Human Rights highlighted a sharp increase since 2016 in sexual exploitation, trafficking and violence in mining areas, due to the existence of a corruption and bribery scheme by organized criminal groups, locally known as *sindicatos*, controlling the mines whereby they pay off military commanders to maintain their presence and illegal activities. The Committee notes that, in her report, the High Commissioner specifically recommended to take urgent steps to end labour and sexual exploitation, and human trafficking in the AMO region (A/HRC/44/54, 15 July 2020, paragraphs 41 and 71). ***The Committee notes this information with concern and urges the Government to take the necessary measures to combat trafficking in persons for both labour and sexual exploitation, including in the Arco Minero del Orinoco. The Committee requests the Government to provide information on the adoption and implementation of the National Plan to combat trafficking in persons for 2020–2023. It also requests the Government to provide information on any entity established, in particular within the framework of the new National Plan, to specifically coordinate the intervention of the many actors involved in the combat of trafficking in persons; and on any assessment made of the impact of the measures implemented to combat trafficking in persons, and any difficulties encountered and follow-up actions envisaged. Lastly, the Committee requests the Government to indicate whether the adoption of the Bill against trafficking in persons is still on the agenda and, if not, the reasons why it has been dropped.***

*Prevention and awareness-raising.* The Committee previously noted that the National Bureau to Combat Organized Crime and the Funding of Terrorism (ONCDOFT), established under the Basic Act of 2012, is responsible for the organization, control and supervision at the national level of any actions aimed at preventing and combating organized crime and the funding of terrorism, among which trafficking in persons (section 5). It encouraged the Government to continue its awareness-raising activities. The Committee notes the Government's general indication that the ONCDOFT carried out several awareness-raising activities within communities and public education institutions to disseminate information on organized crimes, providing tools to prevent citizens from becoming victims of trafficking. The Government adds that a national network against organized crime and funding of terrorism, which is represented by coordination units in each of the 24 states, has been developed by the Government and is responsible for implementing prevention activities regarding organized crime and the funding of terrorism. ***The Committee requests the Government to continue its efforts to combat trafficking in persons by ensuring comprehensive prevention and awareness-raising activities specifically focused on trafficking in persons for labour and sexual exploitation purposes, at both national and local levels. It further requests the Government to provide information on the content of the activities undertaken to that end, as well as on the above-mentioned tools for the prevention of trafficking, the results achieved and any difficulties encountered.***

*Protection of victims*. The Committee previously noted that the National Coordinating Unit for the protection of victims, witnesses and other parties to legal action, in collaboration with victim care units, is responsible for ensuring adequate protection for victims as soon as they are identified. This protection includes medical, psychological and legal assistance, temporary accommodation, money for food and conditions of security. The Committee requested the Government to provide specific information on the number of victims who have benefited from assistance and the type of assistance provided. The Committee notes the Government's general statement that several shelters are available for victims of trafficking where they can benefit from medical and psychological assistance. The Government adds that ONCDOFT is currently revising the protocol for assistance for victims of trafficking and that a large number of stakeholders, including non-profit organizations which provide assistance for the reintegration of victims, are involved in this process. The Committee notes that, in their observations, the CTV, FAPUV and CTASI highlight that the Government did not provide information on the number of victims identified or on the percentage of victims who received assistance and the type of assistance they benefited from, which is an issue of concern in view of the prevalence of trafficking situations within the country. ***Noting with regret the lack of information provided by the Government on the assistance provided to victims of trafficking, the Committee requests the Government to provide specific information on the number of victims who have benefited from assistance and the type of assistance provided. The Committee also requests the Government to provide information on the protocol for assistance for victims of trafficking formulated by the ONCDOFT, once it has been revised.***

*Enforcement of effective penalties.* The Committee previously noted that ONCDOFT is responsible for developing training programmes for officials of the judiciary, the prosecution services and the forces of order on the various types of crimes covered under the Basic Act of 2012, among which trafficking in persons, and requested the Government to provide information on the judicial proceedings initiated and convictions in cases of trafficking, as well as on the measures taken to reinforce the capacities of the various authorities involved in combating this crime. The Committee notes the Government's indication that, since 2018, the Border Trafficking Route has been established in order to enhance training and capacity-building for public officers at key border control locations, providing them with tools to improve mechanisms for the identification of potential victims, assistance mechanisms, and prevention and control measures. Noting the Government's indication that the Office of the Public Prosecutor has initiated legal proceedings for trafficking in persons under section 41 of the Basic Act of 2012 against 163 persons for 2017–2018, the Committee notes with ***regret*** that the Government has still not provided information on the number of convictions or the nature of the penalties imposed. It further notes that, in its observations, the CTV highlights the insufficient implementation of the Basic Act of 2012 by the Government, which did not take any significant action to combat trafficking in persons. The CTV adds that the number of legal proceedings referred to by the Government does not reflect the real magnitude of the issue in the country, more particularly the prevalence of trafficking in women and girls in border and touristic areas, and that there is no information on the complaints of complicity or corruption. ***The Committee requests the Government to continue providing information on the concrete measures taken to enhance training activities and strengthen the capacities of the various authorities involved in combating trafficking in persons, to ensure that these authorities are effectively in a position to detect situations of trafficking in persons, carry out adequate investigations and initiate prosecutions against the perpetrators of this crime, including any complicit public officials. It further requests the Government to provide detailed information on the number and nature of investigations carried out, prosecutions initiated, court decisions handed down and penalties imposed, specifying the provisions of the national legislation under which the criminal proceedings were brought.***

2. *Conditions of work amounting to forced labour. Situation of Cuban doctors.* The Committee previously noted that, in its observations received in 2016, the Independent Trade Union Alliance (ASI) raised specific concerns regarding the recruitment, conditions of work and isolation of Cuban doctors who came to work in the Bolivarian Republic of Venezuela within the framework of an agreement signed between the Governments of the two countries and requested the Government to provide information on these allegations. The Committee notes the Government's indication that Cuban doctors are working under a health programme implemented within the framework of the cooperation agreement signed with the Republic of Cuba in 2000. It states that the Government provides personal housing, food and allowances for personal expenses and that, contrary to the politically motivated observations received from the ASI, Cuban doctors are not isolated. The Committee notes however that, in its observations, the CTV refers to the numerous complaints made by Cuban doctors regarding their conditions of work amounting to forced labour, including underpayment of wages, the main part of which is retained by the Cuban Government, confiscation of passports, limitations on movement, threats of retaliatory actions against workers and their families if they leave the programme, as well as surveillance outside of work. The CTV adds that health workers also denounced this situation. The Committee further notes that, in their observations, FAPUV and CTASI express similar concerns and further highlight that: (i) besides Cuban doctors, Cuban health personnel and other workers who work in Venezuela as "collaborators" are affected by the same situation; and (ii) the agreement with the Cuban Government for the provision of medical and

other services in Venezuela has not been made official and even less approved by the National Assembly. In its additional observations, the CTASI expresses concern about the lack of transparency regarding the terms and conditions of the agreement, and the working conditions of these Cuban workers in Venezuela, and calls upon the Government to provide extensive public information in that regard. The Committee observes that, in her 2018 report following her mission to Cuba, the United Nations Independent Expert on human rights and international solidarity indicates that according to official sources, in July 2017, 42,000 Cuban health workers were based in 63 countries and Cuban doctors were serving in more than 6,000 outpatient clinics in the Bolivarian Republic of Venezuela (A/HRC/38/40/Add.1, 9 May 2018, paragraph 55). The Committee notes that, in May 2019, a complaint on the working conditions of Cuban doctors in the Bolivarian Republic of Venezuela was made before the International Criminal Court following an investigation carried out by a Spanish NGO named Cuban Prisoners Defenders. It further notes that the Organization of American States expressed similar concerns regarding the situation of Cuban doctors. ***The Committee requests the Government to provide further information on the recruitment, conditions of work and termination of employment of Cuban doctors and health workers, including by providing a copy of the agreement signed with the Cuban Government in that respect and examples of contracts signed by Cuban doctors. It further requests the Government to provide information on the number of doctors and health workers who left the programme and the consequences of such resignations. Lastly, the Committee requests the Government to provide information on the number of complaints from Cuban doctors and health workers registered, the nature of the alleged violations and penalties imposed.***

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

## Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)

The Committee notes the observations received from the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) on 31 August 2017. ***It also notes the observations from the Confederation of Workers of Venezuela (CTV) received on 5 November 2019 and requests the Government to provide its reply to these observations.***

*Article 1(a) of the Convention. Imposition of sentences of imprisonment involving the obligation to work as a punishment for expressing political opinions or views ideologically opposed to the established political, social or economic system*. In its previous comments, the Committee noted that persons sentenced to a penalty of deprivation of liberty of *presidio* or *prisión* are subject to an obligation to work (sections 12 and 15 of the Penal Code) and observed that the following provisions of the Penal Code provide for penalties of *prisión*, involving compulsory prison labour, for certain forms of behaviour, namely:

- offending or showing a lack of respect for the President of the Republic or for a number of public authorities (sections 147 and 148);
- public denigration of the National Assembly, the Supreme Court of Justice, etc. (section 149);
- offending the honour, reputation or prestige of a member of the National Assembly or a public servant, or of a judicial or a political body (sections 222 and 225); proof of the truth of the facts is not admitted (section 226); and
- defamation (sections 442 and 444).

Recalling that the Convention prohibits the imposition of work, including prison labour, as a punishment on persons who express political views, the Committee previously noted with deep concern the criminalization of social movements and the expression of political views. It requested the Government to provide information on the application in practice of the above-mentioned provisions, while ensuring that no one who, in a peaceful manner, expresses political views or opposes the established political, social or economic system can be sentenced to imprisonment, under the terms of which compulsory labour could be imposed.

The Committee notes the Government's statement, in its report, that no one, and more particularly no business or union leader, has been condemned for peacefully protesting or expressing political views. It adds that there is no legislative provision imposing an obligation to work on convicted persons and that no complaint has been registered in that respect. Convicted persons can voluntarily participate in cultural, sport or socio-productive activities in order to facilitate their social reintegration once released. The Committee notes that the Government refers to several provisions of the Basic Prison Code (*Official Gazette* No. 6.207 of 28 December 2015), while highlighting that convicted persons can work in areas corresponding to their skills and receive a financial allowance in return for their work. The Government adds that prison labour is a means of social reintegration and is only mandatory when the convicted person intends to reduce the length of his or her custodial sentence and access alternative penalties to imprisonment (sections 60, 63, 65 and 67 of the Code). It notes, nevertheless, that the Government does not provide any information on the application in practice of sections 147 to 149, 222, 225, 226, 442 and 444 of the Penal Code. Furthermore, referring to its previous comments, it recalls that: (i) under the terms of the Basic Prison Code, work by convicted persons is a right but also a duty and, under section 64 of the

Code, convicted persons who refuse work or who voluntarily perform it in an inappropriate manner, commit a very serious fault and are liable to the penalties established in the Code; and (ii) pursuant to sections 12 and 15 of the Penal Code referred to above, persons sentenced to a penalty of deprivation of liberty of *presidio* or *prisión* are subject to an obligation to work. The Committee also emphasizes that where the national legislation provides for the obligation to work for persons convicted to sentences of imprisonment, as is the case in the Bolivarian Republic of Venezuela for penalties of *presidio* and *prisión,* provisions of the legislation which lay down limits or restrictions on the exercise of certain civil rights or public freedoms, the violation of which may be punished by sentences of imprisonment, have an effect on the application of the Convention. Indeed, persons who do not comply with these limits could be convicted to a sentence of imprisonment and, as a consequence, be subjected to compulsory labour.

The Committee notes that, in its observations, the CTV expresses concern about the recurring cases of persecution for expressing political opinions, highlighting that there has been an increase in criminalization of social protests and expression of political opinions other than those of the governmental party, with the possibility of criminal sentences involving forced or compulsory labour. The CTV adds that there have been numerous cases of persecution of union leaders, some of whom have been prosecuted before military tribunals, and that recently several university rectors and lecturers have also been prosecuted for criticizing the Government. The CTV further refers to an investigation carried out by an NGO, which showed that, in 2018, 387 cases of violation of freedom of expression were registered and 24 persons were imprisoned for publishing, on social networks, opinions criticizing governmental actions or data showing the social, economic and political emergency in the country.

The Committee takes note of the adoption of the Constitutional Law against hatred, for peaceful coexistence and tolerance (Act No. 41.274 of 8 November 2017), and more particularly of section 20 which provides that “anyone who publicly or through any means suitable for public dissemination promotes, fosters or incites hatred, discrimination or violence against a person or a group of persons, by reason of their real or alleged membership to a determined social, ethnic, religious or political group … shall be punished by imprisonment for ten to 20 years.” It notes, that pursuant to section 21 of the Act, the real or supposed membership to a determined political group is an aggravated circumstance for the offence. The Committee notes that several bodies, such as the Inter-American Commission on Human Rights (IACHR), have expressed concern regarding the broad, vague and ambiguous nature of the terms mentioned under section 20 of the Act, and highlighted that the declarations issued by the Government indicate that it will be used to persecute the political opposition and criminalize expression of views opposed to the established political system (IACHR, Country report on Venezuela, Situation of human rights in Venezuela, December 2017).

The Committee notes that similar concerns were expressed on the above Act No 41.274 by the United Nations High Commissioner for Human Rights in her 2019 report on the situation of human rights in the Bolivarian Republic of Venezuela, who also highlights that successive laws and reforms have facilitated the criminalization of the opposition and of anyone critical of the Government through vague provisions, increased sanctions for acts that are guaranteed by the right of freedom of peaceful assembly and the use of military jurisdiction for civilians. The United Nations High Commissioner further indicates that neither the Office of the Attorney General nor the Ombudsman, nor the Government nor the police provide protection to victims and witnesses of human rights violations, and that the Attorney General has contributed to stigmatizing and discrediting members of the political opposition and those critical of the Government, in violation of the principle of presumption of innocence. Impunity has enabled the recurrence of human rights violations, emboldened perpetrators and side-lined victims (A/HRC/41/18, 9 October 2019, paragraphs 35, 36, 57, 77 and 80). The Committee notes that, in its Resolution adopted in October 2019, the United Nations Human Rights Council strongly condemns the widespread targeted repression and persecution on political grounds in the Bolivarian Republic of Venezuela and urges the Government to immediately release all political prisoners and all other persons arbitrarily deprived of their liberty. The Committee further notes that the United Nations Human Rights Council highlights that the Prosecutor of the International Criminal Court has decided to open a preliminary examination of the situation in the country to analyse crimes allegedly committed, since at least April 2017, in the context of demonstrations and related political unrest. It further notes that on 30 April 2020, several United Nations human rights experts indicated that they were alarmed at the increasing threats, attacks and charges against journalists as well as criminalization of human rights defenders since the state of health emergency which was declared on 13 March 2020 as a result of the global virus pandemic (OHCHR press release, 30 April 2020).

Lastly, the Committee notes the report of the ILO Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organisation to examine the observance by the Government of the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), of which the ILO Governing Body took note at its 337th Session (GB 337/INS/8, October 2019). It notes more

particularly that the ILO Commission of Inquiry observed with concern that: (i) serious criminal charges, criminalized under the Penal Code and the Basic Code of Military Justice, have been brought against employers' leaders, trade unionists and members of employers' organizations for the exercise of their activities, such as participation in protest activities, or expression of views on issues directly related to the defence of the interests of employers' and workers' organizations; and (ii) their trial by a military court which constitutes serious violations of the exercise of basic civil liberties, such as freedom of expression and freedom of assembly. The Committee notes that the criminal charges imposed as a result of actions carried out during activities of the employers' and workers' organizations, which were referred to by the ILO Commission of Inquiry include: causing panic and/or unrest among the population through the dissemination of false information, insulting the sentry and the armed forces, unlawful association, treason, terrorism, resistance and contempt for authority.

The Committee ***deplores*** the continued criminalization of social movements and expression of views opposed to the established political, social or economic system. ***The Committee strongly urges the Government to take the necessary measures, both in law and practice, to put an immediate end to any violation of the provisions of the Convention by ensuring that no one who, in a peaceful manner, expresses political views or opposes the established political, social or economic system can be sentenced to imprisonment, under the terms of which compulsory labour could be imposed. It requests the Government to provide information on the application in practice of the provisions of the Penal Code, the Basic Code of Military Justice and Act No. 41.274 referred to above, as well as detailed information on court decisions based thereon, with an indication of the facts that gave rise to the convictions and the nature of the sanctions imposed. Lastly, the Committee requests the Government to ensure the immediate release of any person convicted to a prison sentence entailing compulsory prison labour, for peacefully expressing political views or opposing the established political, social or economic system.***

## Viet Nam

### Forced Labour Convention, 1930 (No. 29) (ratification: 2007)

*Article 1(1), 2(2) and 25 of the Convention. Trafficking in persons.* 1. *Penal sanctions and law enforcement.* In its previous comments, the Committee noted that section 119 of the Penal Code prohibits trafficking in persons, and that the adoption of the Act on the Prevention and Suppression of Human Trafficking strengthened the definition of trafficking in persons provided for in this section.

The Committee notes the statistical information provided by the Government in its report on the application of section 119 of the Penal Code as well as the Act on the Prevention and Suppression of Human Trafficking. The Government indicates that from 2016 to 2019, there were 1,059 cases of trafficking detected in the whole country, with 1,432 offenders and 2,674 victims of trafficking. The competent authorities investigated 825 cases and prosecuted 478 cases, with 885 people accused. Moreover, 444 cases were tried, with 909 defendants and 444 cases were resolved and adjudicated, with 818 defendants. However, the Committee notes the absence of information regarding the number of convictions and the penalties imposed. ***The Committee requests the Government to strengthen its efforts to ensure the strict application of national legislation, so that sufficiently effective and dissuasive penalties of imprisonment are imposed and enforced against perpetrators. It also requests the Government to provide information on measures taken in this regard, including the training and capacity-building of law enforcement authorities, as well as on the results achieved. The Committee further requests the Government to continue providing information on the application in practice of section 119 of the Penal Code as well as the Act on the Prevention and Suppression of Human Trafficking, including the number of prosecutions, convictions and the specific penalties imposed.***

2. *National policy. Protection of victims.* The Committee previously noted the adoption of the Action Programme to prevent and combat human trafficking for the period of 2016–2020. It also noted that several circulars were adopted with regard to the prevention and suppression of human trafficking. The Committee requested the Government to continue its efforts to prevent and combat trafficking in persons, and to provide information on the measures taken and results achieved.

The Committee notes the Government's information that a standing agency is established to coordinate the implementation of the Action Programme to prevent and combat human trafficking. The Government also indicates the measures undertaken to strengthen international cooperation in this regard, including the ratification of relevant international conventions and the conclusion of a number of bilateral agreements. The Committee further notes the Government's reference to the Receiving, verifying, protecting and supporting trafficked victims project for the period of 2016–2020, aimed at enabling trafficked victims to access basic social support services and to integrate into the community; encouraging civil society and individuals to participate in providing assistance to victims; and establishing shelters/accommodation for victims. From 2016 to the first half of 2019, 1,254 victims were identified and provided with appropriate assistance, including safe accommodation, psychological counselling, healthcare, life skills-based education, legal assistance upon request, and transfer to their families or

other victim support establishments. ***The Committee requests the Government to continue taking measures to ensure that victims of trafficking are provided with appropriate protection and services, and to provide information on the number of persons benefiting from these services. It also requests the Government to indicate if a new Action Programme to prevent and combat human trafficking is to be developed upon the expiry of the current one in 2020.***

*Articles 1(1) and 2(1). Work exacted in drug rehabilitation centres.* In its previous comments, the Committee noted the Government's indication that persons staying at drug rehabilitation centres are involved in productive work. According to section 104 of the Act on handling administrative violations, the district-level People's Court shall examine and decide to send drug addicts above the age of 18 who have been subject to educative measures in communes, wards and towns, but who remain addicted, into compulsory rehabilitation centres for treatment, work, education, vocational training and community reintegration. The Government also indicated that section 27 of Decree No. 221/2013/ND-CP provides for the working conditions in rehabilitation establishments. The Committee requested the Government to provide information on the application of section 27 of Decree No. 136/2016/ND-CP in practice, including the number of persons who are sent to the drug rehabilitation centres and the types of work performed by these persons.

The Committee notes the Government's information in its report that currently there are 37,384 persons in the drug rehabilitation establishments. The types of work being organized for treatment include mechanical repairing, sewing, carpentry, cultivation and farming, rattan, producing traditional products and preliminary processing of agricultural products. The Government emphasizes that the persons concerned are sent to the drug rehabilitation centres by court decisions, and that the rehabilitation labour is performed under the supervision of public authorities. However, the Committee notes that, in its concluding observations of 2019, the Human Rights Committee expresses its concern about the practice of forced labour and onerous working conditions in drug rehabilitation centres (CCPR/C/VNM/CO/3, paragraph 31). ***The Committee requests the Government to continue providing information on the application of section 27 of Decree No. 136/2016/ND-CP in practice, including the number of persons who are sent to the drug rehabilitation centres and the types of work performed by these persons.***

*Article 2(2)(a). Compulsory military service.* In its previous comments, the Committee noted that, according to the Act on militia and self-defence forces of 2009, Vietnamese citizens aged between 18 and 45 years for men and between 18 and 40 years for women are obliged to join militia or self-defence forces (section 9). The tasks of the militia and self-defence forces include protecting forests and preventing forest fires, protecting the environment and the construction and socio-economic development of localities and establishments (section 8(4)). The Government indicated that this work includes dredging canals, building roads, supporting the economic development of households, planting trees and contributing to reducing and eliminating poverty. The Committee therefore requested the Government to take the necessary measures to ensure that persons working by virtue of compulsory military conscription laws, including in the militia and self-defence forces, only engage in work of a military nature.

The Committee notes with ***satisfaction*** that provisions regarding the engagement of the militia and self-defence forces in socio-economic development tasks were deleted upon the adoption of the Act on militia and self-defence forces in November 2019, with ILO technical assistance. The Government also indicates that currently there are 1,396,431 persons in the militia and self-defence service.

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

## Zimbabwe

### **Forced Labour Convention, 1930 (No. 29)** (ratification: 1998) and **Protocol of 2014** (ratification: 2019)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) received on 1 September 2019 and 29 September 2020, respectively.

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* 1. *Law enforcement and penalties*. In its previous comments, the Committee noted the enactment of the Trafficking in Persons Act, 2014, which provides for a penalty of life imprisonment or any definite period of imprisonment of not less than ten years for offences related to the trafficking of persons (section 3(2) Parts I and II). The Committee requested the Government to provide information on the application in practice of the Trafficking in Persons Act, 2014.

The Committee notes the Government's information in its report that between 2016 and 2018, the police received and dealt with 72 cases of trafficking in persons, of which 71 cases involved female victims trafficked for domestic servitude in Kuwait and the Middle East. Twenty four persons were arrested and

the cases are at various levels of prosecution. The Committee also notes from the second national Plan of Action on human trafficking (NAPLAC) 2019-2021 that, as part of capacity-building for law enforcement officials, modules on trafficking in persons are included in police training. This covers the Trafficking in Persons Act, investigations of cases related to trafficking in persons and public awareness-raising. Capacity-building workshops were conducted for members of the judiciary on adjudication and trials of trafficking in persons cases which were attended by 20 provincial heads of prosecutions and ten provincial heads of magistracy. ***The Committee requests the Government to take the necessary measures to ensure the effective implementation of the Trafficking in Persons Act and to provide information on the convictions and penalties applied. It also requests the Government to continue to provide information on the number of cases of trafficking for both sexual and labour exploitation that have been detected and investigated by the competent authorities.***

2. *Programme of action. Protection of victims*. In its previous comments, the Committee requested the Government to provide information on the measures taken within the framework of the NAPLAC 2016–2018, as well as the results achieved in this regard.

The Committee notes the ZCTU's observation that there is still a lack of awareness of the issue of trafficking in persons, as well as limited policies and programmes in place to assist and protect victims of trafficking.

The Committee notes the Government's information on the activities undertaken within the framework of the NAPLAC 2016-2018. This includes: (i) awareness-raising campaigns conducted in Harare and Bulawayo to sensitize the public on the Trafficking in Persons Act and trafficking-related offences; (ii) distribution of information materials containing messages against trafficking; (iii) commemoration of the World Day against trafficking in persons and awareness-raising of various forms of trafficking; and (iv) establishment of a referral system to ensure assistance and protection of victims of trafficking. The Government also indicates that the reintegration assistance provided to repatriated victims and other victims of trafficking include shelter; medical, educational, psychosocial and legal support; academic training, skills-acquisition and livelihood programmes; financial support to start income-generating projects; and for those with children of school age, assistance under the various Government scholarships, such as the basic education assistance module (BEAM).

The Committee further notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182) that a shelter for the victims of trafficking was refurbished at Harare hospital. A total of 100 female victims of trafficking were provided reintegration assistance, including support to start income-generating projects, as well as academic and skills-acquisition training. The Committee lastly notes that the NAPLAC has been updated based on the key findings, lessons learned and recommendations of the evaluation for the previous NAPLAC, which will guide the national response to trafficking in persons for the period from 2019-2021. ***The Committee requests the Government to pursue its efforts to combat trafficking in persons and to provide information on the measures taken on the prevention, protection, assistance and repatriation of trafficking victims, including within the framework of the NAPLAC 2019-2021.***

*Articles 1(1) and 2(1).* 1. *Legislation concerning vagrancy.* In its previous comments, the Committee drew the Government's attention to certain provisions of the Vagrancy Act (Cap. 10:25), under which any person suspected of being a vagrant, defined as any person who has no settled or fixed place of abode or means of support and who wanders from place to place, or any person who maintains himself by begging or in some other dishonest or disreputable manner (section 2(a) and (b)), is subject to being arrested by a police officer, taken before a magistrate and subsequently detained in a re-establishment centre, where such persons may be maintained and afforded the occupation, instruction or training requisite to fit them for entry into, or return to, employment (section 7(1)). It noted that the provisions of the Vagrancy Act are worded in such general terms as to lend themselves to application as a means of indirect compulsion to work. The Committee noted the Government's indication that the Vagrancy Act would be amended in order to bring it into compliance with the Convention.

The Committee notes the observations of the ZCTU that the Vagrancy Act remains the same and that no progress has been made in this regard.

The Committee notes the Government's information that the alignment of various pieces of legislation with the Constitution is ongoing and that the Vagrancy Act is one of the Acts that has been earmarked for alignment. ***The Committee firmly hopes that the Government will take the necessary measures, without delay, to ensure that in the context of the alignment of its legislation with the Constitution, the Vagrancy Act will be amended, so that its provisions will be limited to the situations where the persons concerned disturb public order or tranquillity or engage in unlawful activities.***

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

## Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1998)

The Committee takes note of the Government's report received in 2019 and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) received on 1 September 2019.

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for the expression of views opposed to the established political, social or economic system*. In its earlier comments, the Committee noted that penalties of imprisonment (involving compulsory prison labour by virtue of section 76(1) of the Prisons Act (Cap. 7:11) and section 66(1) of the Prisons (General) Regulations 1996) may be imposed under various provisions of national legislation in circumstances falling within *Article 1(a)* of the Convention, namely:

– sections 15, 16, 19(1)(b)–(c), and 24–27 of the Public Order Security Act (POSA) related to publishing or communicating false statements prejudicial to the State; making any false statement about or concerning the President; performing any action, uttering any words or distributing or displaying any writing, sign or other visible representation that is threatening, abusive or insulting, intending thereby to provoke a breach of peace; failure to notify the authority of the intention to hold public gatherings; and violation of the prohibition of public gatherings or public demonstrations;
– sections 31 and 33 of the Criminal Law (Codification and Reform) Act (Cap. 9:23) (Criminal Law Code) as amended in 2005 which contain provisions similar to the above-mentioned sections of the POSA concerning publishing or communicating false statements prejudicial to the State; undermining authority of or insulting the President etc.; and
– sections 37 and 41 of the Criminal Law Code under which sanctions of imprisonment may be imposed, inter alia, for participating in meetings or gatherings with the intention of disturbing the peace, security or order of the public, uttering any words or distributing or displaying any writing, sign or other visible representation that is threatening, abusive or insulting, intending thereby to provoke a breach of peace; and engaging in disorderly conduct in public places with similar intention.

The Committee notes the observations made by the ZCTU that the provisions of the POSA regulating public gatherings are still used to ban trade union meetings and other protests. Although a new Bill repealing POSA entitled Maintenance of Peace and Order (MOPO) Bill is before the Parliament, this is more draconian than the POSA. The Committee also takes note of the ZCTU's indication that 20 members of the ZCTU are facing criminal charges under section 37 of the Criminal Law for having participated in a ZCTU organised protest action in October 2018, whom if convicted will be subjected to forced labour under the Prisons Act.

The Committee notes the Government's statement in its supplementary report that the POSA was repealed in November 2019 and replaced by the MOPO Act which sets out clearly the lines of conduct of the police and security forces. The Committee further takes note of the contents of the MOPO Bill supplied by the ZCTU along with its observations.

The Committee notes with ***regret*** that while sections 15, 19 and 21 of the POSA have been repealed, the corresponding provisions are incorporated under sections 31, 33 and 37 of the Criminal Law Code. It also notes that sections 25 to 27 of the POSA concerning failure to notify the authority of the intention to hold public gatherings, and violation of the prohibition of public gatherings or public demonstrations are reproduced under sections 7(5) and 8(11) of the MOPO Bill with sanctions of imprisonment which involve compulsory prison labour. In this regard, the Committee notes the statement made in the End of Mission Statement of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, on his visit to Zimbabwe in September 2019 that the MOPO Bill does not propose significant substantive amendments targeted to address the main problems prevailing in the POSA. The Bill has worrying similarities to the POSA revealing a common scope in which the exercise of the right to peaceful assembly is not fully guaranteed. Instead the MOPO Bill continues to give law enforcement agencies broad regulatory discretion and powers.

Referring to its General Survey of 2012 on the fundamental Conventions, the Committee recalls once again that *Article 1(a)* of the Convention prohibits the use of "any form" of forced or compulsory labour, including compulsory prison labour, as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. However, the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour are not in conformity with the Convention if they enforce a prohibition of the peaceful expression of non-violent views that are critical of government policy and the established political system, whether the prohibition is imposed by law or by an administrative decision. Since opinions and views opposed to the established system may be expressed not only through the press or other communications media, but also at various kinds of meetings and assemblies, if such meetings and assemblies are subject to prior

authorization granted at the discretion of the authorities and violations can be punished by sanctions involving compulsory labour, such provisions also come within the scope of the Convention (paragraphs 302–303).

***The Committee therefore strongly urges the Government to take the necessary measures to ensure that sections 31, 33, 37 and 41 of the Criminal Law Code and sections 7(5) and 8(11) of the MOPO Bill are repealed or amended in order to bring them into conformity with the Convention by ensuring that penalties involving compulsory labour, including sentences of imprisonment including compulsory prison labour, are not imposed on persons who hold or express political views or views ideologically opposed to the established political, social or economic system. Pending the adoption of such measures, the Committee requests the Government to provide information on the application of these provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.***

*Article 1(d). Penal sanctions involving compulsory labour as a punishment for having participated in strikes.* In its earlier comments, the Committee referred to certain provisions of the Labour Act (sections 102(b), 104(2)–(3), 109(1)–(2), and 122(1)) punishing persons engaged in an unlawful collective action with sanctions of imprisonment, which involves compulsory prison labour. The Committee noted the Government's indication that these sections of the Labour Act were included in the draft Principles for the Harmonization and Review of Labour Laws in Zimbabwe. In 2011, the social partners had agreed to the principle of streamlining mechanisms to deal with collective job action and review ministerial powers and those of the Labour Court on collective job action. This principle would provide the framework to amend section 102(b) defining essential services, section 104 on balloting for strike action, sections 107, 109 and 112 on excessive penalties, including lengthy periods of imprisonment and deregistration of trade unions and dismissal of employees involved in collective job action. Although the Government indicated that the Labour Law reform was ongoing with the participation of the social partners and that it would take into consideration the comments made by the Committee of Experts, the Committee noted that the Labour Amendment Act No. 5, promulgated in August 2015 did not align the above-mentioned sections with the Convention. The Committee therefore once again urged the Government to take the necessary measures in this regard.

The Committee notes the ZCTU's observation that no amendments have been made to the above-mentioned provisions. In this regard, the Committee had noted with deep regret the lack of progress in the labour law reform in its 2019 observations made under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (N0. 87).

The Committee notes with ***regret*** that the Government's report does not contain any information on this point. ***The Committee strongly urges the Government to ensure that sections 102(b), 104(2)–(3), 109(1)–(2), and 112(1) of the Labour Act (Cap. 28:01) are amended so that no sanctions of imprisonment may be imposed for organizing or peacefully participating in strikes, in conformity with Article 1(d) of the Convention.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 29** *(Belize, Congo, Djibouti, Dominica, Equatorial Guinea, Ghana, Haiti, Kyrgyzstan, Lebanon, Lesotho, Liberia, Madagascar, Maldives, Mali, Mozambique, Myanmar, Netherlands: Aruba, Niger, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Qatar, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Samoa, Sao Tome and Principe, Saudi Arabia, Serbia, Seychelles, Somalia, South Africa, South Sudan, Spain, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Bolivarian Republic of Venezuela, Viet Nam, Zimbabwe);* **Convention No. 105** *(Barbados, Belize, Chad, Congo, Djibouti, Dominica, Equatorial Guinea, Eritrea, Grenada, Kazakhstan, Kyrgyzstan, Lebanon, Lesotho, Liberia, Maldives, Mozambique, Netherlands: Aruba, Pakistan, Panama, Peru, Philippines, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Serbia, Seychelles, Sierra Leone, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Turkmenistan, Ukraine, United Arab Emirates, United Republic of Tanzania, United States of America, Uzbekistan, Zimbabwe).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 105** *(Romania).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 29** *(Seychelles, Slovakia, Slovenia, Suriname and United Kingdom of Great Britain and Northern Ireland:*

*Anguilla, Bermuda, British Virgin Islands, Falkland Islands: Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat and St Helena)*; **Convention No. 105** *(Malta, Mauritania, Mexico, Oman, Panama, Poland, Saudi Arabia, Seychelles, Slovakia, Slovenia, Spain, Suriname, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, Bermuda, British Virgin Islands, Falkland Islands: Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat and St Helena, Uruguay)*.

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

## General observation

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

Following the Centenary celebrations of 2019, the ILO celebrates another landmark achievement of the historic ***universal ratification*** of one of its fundamental Conventions, the Worst Forms of Child Labour Convention, 1999 (No 182). Since the ILO's founding in 1919, child labour has been a core concern and several Conventions were adopted in this domain, including the Minimum Age Convention 1973, (No.138), another fundamental Convention aimed at the progressive elimination of child labour. The 1998 Global March against child labour, the movement that demanded renewed action against child labour, paved the way for the ILO constituents to add new urgency to develop an international instrument for tackling child labour and its worst forms. Recognizing a growing international consensus that certain forms of child labour are so dangerous and harmful to the welfare of the children that they could no longer be tolerated, the international community came together with one voice to adopt on 17 June 1999 a new instrument for the ***prohibition and elimination of the worst forms of child labour***. Convention No.182 has today not only attained the extraordinary success of being the first ILO Convention to achieve universal ratification; it has also been instrumental in bringing the ratification rate of Convention No 138 to over 90 per cent.

The Committee welcomes this universal ratification of Convention No. 182 which is now an authoritative standard in every ILO Member State. The Committee considers that this universal ratification reflects a global consensus that the worst forms of child labour are unacceptable regardless of the level of a country's development and demonstrates the will of ILO Member States to ensure that every child, everywhere, is free from the worst forms of child labour. Universal ratification also paves the way for the universal alignment of domestic policies and laws on child labour and represents an opportunity to mainstream child labour considerations into relevant national policies and plans.

The Committee notes that the Convention focuses very specifically on the extreme forms of child labour and it encompasses penal law, labour law and programmatic components highlighting the necessity to take ***immediate and effective measures to prohibit in law and eliminate in practice the worst forms of child labour*** for all persons ***under the age of 18 years***. The ***definition of the worst forms of child labour*** comprises: (a) slavery and forced labour, including child trafficking, debt bondage and forced recruitment of children for armed conflict; (b) child prostitution and pornography; (c) the use of children in illicit activities, in particular for the production and trafficking of drugs; and (d) work likely to harm the health, safety or morals of children. Several countries have either adopted comprehensive legislation to prohibit the worst forms of child labour or amended the existing legislative framework in order to bring it into conformity with the provisions of the Convention. The Committee has noted that given the broad scope of application of the Convention, in most cases, emphasis on explicit legal provisions is needed in order to ensure the full application of the Convention. In this regard, the Committee has underscored the importance of enacting legal provisions prohibiting the worst forms of child labour covering both boys and girls under the age of 18 years while the prohibition on the ***sale and trafficking of children*** covers internal and external trafficking for both labour and sexual exploitation.

With regard to the ***use, procuring or offering of a child for prostitution***, the Committee has emphasized on various occasions the importance of punishing all those who use children for the purpose of prostitution by clearly distinguishing the age of sexual consent which is less than 18 years in several countries from the age of protection from commercial sexual exploitation which is 18 years. Furthermore, noting that the online sexual exploitation of children has been emerging as a serious threat in many countries, the Committee has stressed the need to address it legally.

The Committee recalls that the Convention defines ***hazardous work*** as 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. In accordance with the Convention, ***the types of hazardous work to be prohibited to young persons under 18 years shall be determined*** according to the national circumstances and after consultation with the organizations of employers and workers concerned. The Committee has on numerous occasions noted with satisfaction the adoption, by several governments, of regulations providing a list of types of hazardous work prohibited to young persons under 18 years. The Committee takes this opportunity to strongly encourage those governments who have not yet adopted regulations in this regard to intensify their efforts to ensure the adoption of such regulations, giving full consideration to the guidance provided under Paragraph 3 of the Recommendation No. 190 and in consultation with the social partners.

The Committee recalls that the Convention recognizes the importance of ***effective implementation and enforcement*** of the provisions giving effect to the Convention, including through the provision and application of appropriate and dissuasive ***penalties*** and the need to establish or designate appropriate ***monitoring mechanisms*** to monitor its implementation. The Committee wishes to acknowledge that many

countries have adopted a solid legislative framework, which provides for criminal, administrative and other appropriate sanctions for engaging children in the worst forms of child labour. In this respect, the Committee has noted the important role played by the national police forces, the border and immigration officials and the special task forces or units established in several countries in combating trafficking and the commercial sexual exploitation of children. However, on several occasions, it has observed that insufficient staff and resources, corruption among law enforcement officials, or complicity with perpetrators have hindered the effective monitoring of the worst forms of child labour. Accordingly, the Committee has drawn the governments' attention to strengthen the capacities of the law enforcement bodies in identifying, investigating, prosecuting, convicting and imposing appropriate and dissuasive penalties, including complicit officials, for violations of the provisions prohibiting the worst forms of child labour. The Committee has also stressed in many instances that children trapped in the worst forms of child labour such as commercial sexual exploitation and work in illicit activities should be treated as victims, rather than criminals. With regard to the monitoring of hazardous child labour, the labour inspection systems are particularly relevant in many countries while special child labour monitoring units or child protection units are established in some other countries. Observing that in many countries children are engaged in exploitative and hazardous work in sectors outside the normal reach of the labour inspectors, such as child domestic work, work in agriculture or self-employed children, the Committee has reiterated the need to strengthen the capacity or expand the reach of the labour inspectorate or assign them with special powers in order to ensure that children working in these sectors benefit from the protection afforded by the national legislation.

In several countries, the Committee has expressed concern over serious implementation gaps vis-à-vis the Convention including over the situation of children in conflict zones who were recruited as combatants, used as human shields, sex slaves and suicide bombers. It has urged governments to protect children in situations of fragility and crisis. It has also noted with concern the situation of children falling victims to trafficking and commercial sexual exploitation, sex tourism and child domestic work and at children who are vulnerable to the worst forms of child labour, including children working on the street, children involved in begging, child orphans of HIV/AIDS, as well as an increasing number of refugee children, most of whom are unaccompanied. The Committee has requested that governments take the necessary measures to prevent the engagement of children in such worst forms of child labour, remove, rehabilitate and socially integrate them through the provision of education or vocational training. The Committee observes that many countries have adopted and implemented specific programmes of action and effective and time-bound measures to eliminate the worst forms of child labour, as required by the Convention, which have had a significant impact in preventing and withdrawing children from these worst forms. These include national plans of action to combat and eliminate the worst forms of child labour, in particular trafficking of children, the commercial sexual exploitation of children, child bonded labour, and hazardous child labour. In this regard, the Committee wishes to highlight the role played by the ILO through its International Programme on the Elimination of Child Labour (IPEC) in supporting more than 100 countries in developing and implementing projects and time-bound programmes to combat the worst forms of child labour. Now called IPEC+, this Flagship Programme operates in some 62 countries in every region and works with the ILO's constituents (governments, employers' and workers' organizations), as well as with enterprises and small producers' organizations, NGOs and civil society organizations. It is worthy to note that, while acknowledging the relevance of the role played by NGOs and civil society organizations, the Committee recalls that the ultimate responsibility lies with the Governments, and therefore they should take all measures within their power to address the situation of all children exposed to the worst forms of child labour including street children, allocating all funds available to that end.

The Committee recalls the crucial importance of ***access to free basic education***, which is key both in preventing the engagement of children in the worst forms of child labour and in contributing to the rehabilitation and social integration of children removed from such activities. The Committee has observed that Member States have in recent years implemented various programmes to improve access to free basic education, as required by the Convention, such as conditional cash transfer programmes aimed at providing families in situations of poverty with financial allowances on the condition that their children attend school. The Committee has also taken note of scholarships for children to cover the hidden costs of education such as uniforms, books and transports, as well as school feeding programmes to provide meals for children. These measures have improved access to education in both primary and secondary education. According to the UNESCO Institute of Statistics, the number of out-of-school children of primary and secondary school age has dropped from 380 million in 1999, when the Convention was adopted, to 258 million in 2018, even as the world population of children of school age continues to grow.

The Committee recalls that under the Convention, ***international cooperation*** and ***mutual assistance*** are particularly important in prohibiting and eliminating the worst forms of child labour. The Committee encourages Member States to strengthen their efforts to enhance collaboration through multilateral, regional and bilateral cooperation agreements to supress the worst forms of child labour. In this respect, the Committee notes that international cooperation between law enforcement bodies of some countries

in the field of information exchange, cross-border monitoring and training has contributed to combating the sale and trafficking and the commercial sexual exploitation of children. The Committee further wishes to emphasize the significant role of poverty reduction programmes in breaking the cycle of poverty, which is essential for the elimination of the worst forms of child labour. Given the close correlation between child labour and poverty, the Committee encourages Member States to enhance mutual assistance and support for social and economic development and poverty eradication programmes, including by integrating child labour concerns into rural development schemes, poverty alleviation plans and social protection systems to achieve an effective reduction in poverty among children.

The Committee underscores the importance of ***sufficient and up-to-date data*** on the nature, extent and trends of the worst forms of child labour for the effective application of the Convention in practice. The Committee welcomes the initiative by several countries to conduct a national survey on child labour as well as the inclusion of a child labour module in their national work force survey, which has allowed for the monitoring of child labour trends and in determining the magnitude of child labour, and its worst forms. The Committee encourages Member States to pursue their efforts to take the necessary measures to ensure the collection, processing and analysis of data on the situation of children involved in the worst forms of child labour, to the extent possible disaggregated by age and gender.

The Committee welcomes the political will manifested by governments in addressing the particular concerns and issues raised by the Committee on the implementation and practical application of the provisions giving effect to the Convention. The adoption of effective laws and policies and their implementation have resulted in a reduction of child labour and its worst forms by almost 40 per cent (over 94 million children) since 2000, according to the 2017 Global estimates on modern slavery and child labour. Given that almost 73 million children are still involved in hazardous child labour and the persistence of other worst forms of child labour in many countries, the Committee is concerned that the challenge of completely eliminating the worst forms of child labour is enormous and requires urgent and effective action. The Committee notes with concern the increased vulnerability of children to child labour and its worst forms due to the ongoing COVID-19 pandemic and the ensuing economic crisis. In this regard, the Committee observes that according to the 2020 ILO Issue Paper on COVID-19 and Fundamental Principles and Rights at Work, COVID-19 could reverse a generation of progress against child labour and its worst forms, as an estimated 42–66 million children could fall into extreme poverty in 2020. A growth in the worst forms of child labour is of particular concern with evidence indicating new cases of bonded child labour, such as domestic servitude, as well as commercial sexual exploitation, hazardous work in mining and agriculture and a range of sweatshop activities. The Committee hopes that the international community, keeping in mind all international instruments for the protection of children and in partnership with Alliance 8.7, will stand firm on its commitment in achieving the global target 8.7 of the United Nations Sustainable Development Goals (SDG) by 2025. The Committee is of the view that effective law enforcement coupled with well-designed national child labour policies, child-friendly facilities and effective child participation and programmes, including the building and extension of social protection measures, expanding access to free basic and quality education and the promotion of decent work for adults, especially through addressing informality, will make countries more resilient in eliminating the worst forms of child labour. While celebrating this historic moment, the Committee appeals to the tripartite constituents to build on the momentum of this historic achievement to redouble their efforts to deliver on the aspirations of this fundamental Convention to end the worst forms of child labour in the near future and to leave no child behind.

## Chad

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

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

*Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845–S/2013/245, paragraphs 45 and 46), despite progress in the implementation of the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad, and although the national army of Chad did not recruit children as a matter of policy, the country task force verified 34 cases of recruitment of children by the army during the reporting period. The 34 children appeared to have been enlisted in the context of a recruitment drive in February–March 2012, during which the army gained 8,000 new recruits. In this respect, the Committee noted the new roadmap of May 2013, adopted further to the review of the implementation of the action plan concerning children associated with the armed forces and armed groups in Chad and aimed at achieving full observance of the 2011 action plan by the Government of Chad and the United Nations task force. The Committee observed that, in the context of the roadmap, one of the priorities was to speed up the adoption of the preliminary draft of the Child Protection Code, which prohibits the recruitment and use of young persons under 18 years of age in the national security forces and lays down penalties to that effect. Moreover, during 2013 it was planned to establish transparent, effective and accessible complaint procedures regarding cases of recruitment and use of children, and also to

adopt measures for the immediate and independent investigation of all credible allegations of recruitment or use of children, for the persecution of perpetrators and for the imposition of appropriate disciplinary sanctions.

The Committee takes note of the information contained in the United Nations Secretary-General's report of 15 May 2014 to the Security Council on children and armed conflict (A/68/878–S/2014/339). According to this report, the deployment of Chadian troops to the African-led International Support Mission in Mali (AFISMA) has prompted renewed momentum to accelerate the implementation of the action plan signed in June 2011 to end and prevent underage recruitment in the Chadian National Army, and the Chadian authorities have renewed their commitment to engage constructively with the United Nations to expedite the implementation of the action plan. The Government of Chad, in cooperation with the United Nations and other partners, has therefore taken significant steps to fulfil its obligations. For example, a presidential directive was adopted in October 2013 to confirm 18 years as the minimum age for recruitment into the armed and security forces. This directive also establishes age verification procedures and provides for penal and disciplinary sanctions to be taken against those violating the orders. The directive was disseminated among the commanders of all defence and security zones, including in the context of several training and verification missions. Furthermore, on 4 February 2014, a presidential decree explicitly criminalized the recruitment and use of children in armed conflict.

The Secretary-General states, however, that while the efforts made by the Government to meet all obligations under the action plan have resulted in significant progress, a number of challenges remain to ensure sustainability and the effective prevention of violations against children. Chad should pursue comprehensive and thorough screening and training of its armed and security forces to continue to prevent the presence of children, including in the light of Chad's growing involvement in peacekeeping operations. While no new cases of recruitment of children were documented by the United Nations in 2013 and no children were found during the joint screening exercises carried out with the Chadian authorities, interviews confirmed that soldiers had been integrated in the past into the Chadian National Army from armed groups while still under the age of 18. According to the Secretary-General, the strengthening of operating procedures, such as those for age verification, which ensure the accountability of perpetrators, should remain a priority for the Chadian authorities. Finally, the Secretary-General invited the National Assembly to proceed as soon as possible with the examination and adoption of the Child Protection Code, which should provide greater protection for the children of Chad. ***The Committee therefore requests the Government to intensify its efforts to end, in practice, the forced recruitment of children under 18 years of age by the armed forces and armed groups and to undertake immediately the full demobilization of all children. The Committee urges the Government to take immediate measures to ensure that the perpetrators are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting and using children under 18 years of age in armed conflict. Finally, the Committee urges the Government to take the necessary measures to ensure the adoption of the Child Protection Code as soon as possible.***

*Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Preventing children from being engaged in the worst forms of child labour, removing children from these forms of labour and ensuring their rehabilitation and social integration. Children who have been enlisted and used in armed conflict.* In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845–S/2013/245, paragraph 49), the actions taken by the Government for the release, temporary care and reunification of separated children, while encouraging, were not yet in line with the commitments made in the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad. The Committee noted that one of the priorities referred to in the 2013 roadmap was to secure the release of children and support their reintegration.

The Committee notes that, according to the Secretary-General's report of 15 May 2014, a central child protection unit has been established in the Ministry of Defence, as well as in each of the eight defence and security zones, to coordinate the monitoring and protection of children's rights and to implement awareness-raising activities. Between August and October 2013, the Government and the United Nations jointly conducted screening and age verification of approximately 3,800 troops of the Chadian national army in all eight zones. The age verification standards had been previously developed during a workshop organized by the United Nations in July. In addition, between August and September 2013, a training-of-trainers programme on child protection was attended by 346 members of the Chadian National Army. As from July 2013, troops of the Chadian National Army deployed in Mali started to receive pre-deployment training on child protection and international humanitarian law; in December of the same year, 864 troops attended child protection training at the Loumia training centre. ***The Committee encourages the Government to intensify its efforts and continue its collaboration with the United Nations in order to prevent the enrolment of children in armed groups and improve the situation of child victims of forced recruitment for use in armed conflict. In addition, the Committee requests the Government once again to supply information on measures taken to ensure that child soldiers removed from the armed forces and groups receive adequate assistance for their rehabilitation and social integration, including reintegration into the school system or vocational training, wherever appropriate. It requests the Government to supply information on the results achieved in its next report.***

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

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

## Congo

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Sale and trafficking of children.* In its previous comments, the Committee noted the Government's statement that there is child trafficking between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work. According to the Government, the children are forced to work all day in harsh conditions by their host families, and are subjected to all kinds of hardships. The Committee noted that sections 345, 354 and 356 of the Penal Code lay down penalties for anyone found guilty of the forcible or fraudulent abduction of persons including young persons under 18 years of age. It requested the Government to indicate to what extent sections 345, 354 and 356 of the Penal Code have been implemented in practice. ***The Committee requests the Government once again to supply information on the application of sections 345, 354 and 356 of the Penal Code in practice, including, in particular, statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children.* In its previous observations, the Committee noted the Government's statement acknowledging that the trafficking of children between Benin and Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work is contrary to human rights. It also noted that the Government has taken certain measures to curb child trafficking, including: (a) the repatriation by the Consulate of Benin of children who have either been picked up by the national police or removed from families; and (b) the requirement at borders (airport) for minors (young person under 18 years of age) to have administrative authorization to leave the territory of Benin. The Committee asked the Government to provide information on the impact of the measures taken with regard to the rehabilitation and social integration of children following their withdrawal from labour. It noted that the Government's report does not contain any information on this subject. ***The Committee requests the Government once again to supply information on the time-bound measures taken to remove young persons under 18 years of age from this worst form of child labour and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the impact of these measures.***

*Application of the Convention in practice.* The Committee noted that, according to the concluding observations of the Committee on the Rights of the Child on the initial report of Congo of October 2006 (CRC/C/COG/CO/1, paragraph 85), a study of the root causes and repercussions of trafficking is due to be conducted in the country. ***The Committee requests the Government to supply information on the results of this study and to supply a copy of it once it has been prepared.***

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

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

## Djibouti

### Minimum Age Convention, 1973 (No. 138) (ratification: 2005)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1 of the Convention. National policy to ensure the effective abolition of child labour; application of the Convention in practice.* In its previous comments, the Committee noted the Decent Work Country Programme (DWCP) 2008–12 for Djibouti, which prioritized, inter alia, the improvement of conditions of work by promoting national and international labour standards, with a particular focus on child labour. The Committee also noted the adoption of the National Strategic Plan for Children in Djibouti (PSNED) for the 2011–2015 period, with the goal of establishing a protective environment conducive to the observance of the fundamental rights of children. The Committee asked the Government to provide information on the implementation of the DWCP and the PSNED and on the results achieved regarding the progressive elimination of child labour. It also asked the Government to provide information on progress made in framing a national policy to combat child labour.

The Committee notes that, according to UNICEF, for the 2002–12 period, 7.7 per cent of children between five and 14 years of age in Djibouti were engaged in activities deemed to be work. The Committee notes the Government's indication in its report that it is not in a position to communicate the results achieved through the PSNED since the studies conducted are still in draft form. The Government also indicates that the DWCP could not be adopted owing to a lack of agreement with the trade unions and it hopes for a resumption of social dialogue, with ILO assistance, with a view to adoption and implementation of the DWCP in the near future. The Committee also notes the "Djibouti Compendium of Statistics" attached to the Government's report and the Government's statement that the Directorate of Statistics and Demographic Studies (DISED) has not undertaken any survey in relation to child labour. ***The Committee firmly hopes for a resumption of social dialogue without delay and requests that the Government take the necessary steps to ensure the effective implementation of the DWCP and the PSNED. It requests that the Government provide information on the results achieved regarding the progressive elimination of child labour and on progress made in framing a national policy to combat child labour. Lastly, the Committee again requests that the Government take the necessary measures to ensure that studies on the extent and nature of child labour in Djibouti are conducted in the near future, and that the results are then communicated to the Office.***

*Article 2(1). Scope of application and labour inspection.* The Committee previously noted that, by virtue of section 1 of Act No. 133/AN/05/5ème issuing the Labour Code (hereinafter: Labour Code), the Labour Code applies only to employment relationships. It also noted the Government's indication that the provision on the minimum age for access to work is observed in the formal sector but is not applied effectively in the informal economy. The Committee further noted that, despite new Act No. 199/AN/13/6ème, supplementing Act No. 212/AN/07/5ème establishing the National Social Security Fund, which extends health-care benefits to all self-employed workers in the informal economy, the Government recognized that the lack of structure in the informal economy prevented the identification of issues faced by young workers in the sector.

The Committee notes the Government's indication that it hopes to submit the question of informal work to the National Labour Council, with a particular focus on the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The Committee recalls that the Convention applies to all branches of economic activity, whether formal or informal, and that it covers all types of employment or work, whether or not it is effected on the basis of a dependent employment relationship, and whether or not it is remunerated. ***The Committee therefore requests that the Government take steps to ensure that the protection afforded by the Convention is secured to children under 16 years of age working in the informal economy, particularly by adapting and strengthening the labour inspectorate in order to improve labour inspectors' capacity to identify cases of child labour. It requests that the Government provide information on this matter and also to communicate the results achieved.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that, according to section 4 of Act No. 96/AN/00/4ème setting out the policy for Djibouti's education system, the State guarantees education for children from the age of six to 16 years. The Committee also noted that, in 2006, the net primary school enrolment rate was 66.2 per cent and at secondary level the rate was 41 per cent.

The Committee notes that, despite the improvements in school attendance, Djibouti still has a low school enrolment rate and that the goal, established in the PSNED, of achieving a 100 per cent enrolment rate for children in the 6–10 age group by 2015 was not achieved. Indeed, in 2014, according to the UNESCO Institute of Statistics, the attendance rate was 67.39 per cent in primary education and 46.35 per cent in secondary education. ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee requests that the Government intensify its efforts and take measures that will ensure children's participation in compulsory basic schooling, or in an equivalent setting. It requests that the Government provide information on the recent measures taken to increase the school attendance rate, at both primary and secondary levels, so as to prevent children under 16 years of age from working. It further requests that the Government provide recent statistics on the primary and secondary school enrolment rates in Djibouti.***

*Article 3(1). Age of admission to hazardous work.* The Committee previously noted that, according to section 112 of the Labour Code, at the request of a labour inspector, women or young persons between 16 and 18 years of age may not be placed in employment recognized as being beyond their strength by an approved doctor. However, the Committee observed that the national legislation does not appear expressly to establish, as *Article 3(1)* of the Convention requires, a minimum age of 18 years for any type of employment or work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of young persons. ***Noting once again the lack of information on this matter in the Government's report, the Committee again requests that the Government take the necessary measures to ensure that no person under 18 years of age is authorized to engage in hazardous work, in accordance with Article 3(1). It requests that the Government provide information on the progress made in this regard.***

*Article 3(2). Determination of hazardous types of work.* The Committee recalls that, according to section 110 of the Labour Code, the employment of young persons in domestic work, hotels and bars is strictly prohibited, with the exception of employment strictly in the area of catering. Furthermore, under section 111 of the Labour Code, an order adopted on the proposal of the Minister of Labour and the Minister of Health, after consultation with the National Council for Labour, Employment and Social Security (CONTESS), shall determine the nature of the work and the categories of enterprise prohibited for all women, pregnant women and young people, and the applicable minimum age. The Committee previously asked the Government to adopt such an order on jobs and enterprises prohibited for young people.

The Committee again notes the Government's indication that the order in question has been drawn up and that it has pledged to refer the adoption thereof to CONTESS. It also indicates that no controls have been undertaken to date by the labour inspectorate on hazardous types of work performed by young people. ***The Committee again requests that the Government take the necessary steps as a matter of urgency to ensure that the order determining the nature of the work and the categories of enterprise prohibited for young people under 18 years of age is adopted under section 111 of the Labour Code in the near future.***

***Noting the interest expressed by the Government in obtaining technical assistance from the Office, the Committee invites the Government to avail itself of ILO technical assistance in order to facilitate the application of the Convention.***

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

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Articles 3(b) and 7(2) of the Convention. Use, procuring or offering of a child for prostitution or illicit activities; effective and time-bound measures. Clause (b). Assistance for removing children from the worst forms of child labour.* The Committee previously noted that the Committee on the Rights of the Child (CRC) once again expressed its concern at the high number of children, particularly girls, involved in prostitution and at the lack of facilities providing services for sexually exploited children.

The Committee notes the Government's indication that it does not have up-to-date information on this matter. ***The Committee urges the Government to take effective and time-bound measures to remove children from prostitution, and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the progress achieved in this respect.***

*Articles 3(d) and 4(1). Hazardous work and determination of these types of work.* ***As regards the prohibition on employing children under 18 years of age in work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, as prescribed by Article 3(d) of the***

***Convention, and also the adoption of a list of hazardous types of work, the Committee refers to its detailed comments relating to the Minimum Age Convention, 1973 (No. 138).***

*Article 6. Programmes of action to eliminate the worst forms of child labour.* The Committee previously noted that in the context of activities carried out under the Decent Work Country Programme (DWCP) for Djibouti for 2008–12, which prioritized, inter alia, the improvement of conditions of work through the promotion of national and international labour standards, with a particular focus on child labour, one of the objectives was that the ILO constituents and the social partners should work together to prevent and eliminate the worst forms of child labour. In this regard, it was planned to formulate and implement a national plan of action for the elimination of the worst forms of child labour.

The Committee notes the Government's indication that the DWCP has not been adopted owing to a lack of agreement between the Government and the trade unions but that it hopes that, with the help of the Office, social dialogue can resume and that the national plan of action for the elimination of the worst forms of child labour will be adopted and implemented. ***The Committee firmly hopes that social dialogue will resume as soon as possible. It again requests the Government to take immediate and effective measures to ensure that the national plan of action for the elimination of the worst forms of child labour is formulated, adopted and implemented as soon as possible and to provide information on the progress made in this respect.***

*Article 7(2)(d). Identifying children at special risk.* 1. *HIV/AIDS orphans.* In its previous comments, the Committee noted that despite the measures taken by the Government in favour of orphans and vulnerable children (OVCs), the number of HIV/AIDS orphans had increased (to 8,800 in 2011).

The Committee notes that the Government does not supply any information on the measures taken to prevent the engagement of HIV/AIDS orphans in the worst forms of child labour. However, the Committee notes that according to the UNICEF publication *The state of the world's children 2016: A fair chance for every child*, a total of 6,000 children were orphaned as a result of HIV/AIDS in 2014. It also notes that the Ministry of Health has drawn up a National Health Development Plan (2013–17), which indicates that in the context of the Horn of Africa Partnership (HOAP) to address HIV vulnerability and cross-border mobility, the Government renewed its commitment to intensifying and strengthening inter-ministerial collaboration at the national and subregional levels in order to stop the spread of HIV/AIDS and reverse the current trend of this scourge. ***Recalling that HIV/AIDS orphans are at greater risk of involvement in the worst forms of child labour, the Committee again requests the Government to supply information on the impact of measures, policies and plans aimed at preventing the engagement of HIV/AIDS orphans in the worst forms of child labour, and on the results achieved.***

2. *Street children.* The Committee previously noted the Government's statement that most of the children living and working on the streets were of foreign origin and often worked as beggars or shoeshine boys or girls. It also noted that the CRC continued to express concern at the very high number of children still on the streets and at the continued exposure of these children to prostitution, sexually transmissible infections, including HIV/AIDS, economic and sexual exploitation, and violence.

The Committee notes that the Government does not provide any information in this respect. However, it notes that a paper entitled *Humanitarian action for children*, published by UNICEF in 2016, indicates that 200 street children received social assistance through the humanitarian action of UNICEF, with the collaboration of the Government. ***Recalling that street children are particularly exposed to the worst forms of child labour, the Committee again urges the Government to take immediate and effective measures to protect them from the worst forms of child labour and ensure their rehabilitation and social reintegration, and also to provide information on progress made in this respect.***

*Application of the Convention in practice.* The Committee previously noted that the CRC observed that there were gaps in the surveys that had been carried out in the areas of poverty, education and health, and that there was insufficient capacity to centralize and analyse population data. The Committee notes the Government's wish to obtain technical assistance from the Office with regard to drawing up statistics. ***The Committee requests the Government once again to take steps to ensure the availability of statistics on the nature, extent and trends of the worst forms of child labour, disaggregated by age and gender, and on the number of children covered by the measures giving effect to the Convention.***

***Noting the interest expressed by the Government in obtaining technical assistance, the Committee invites the Government to avail itself of technical assistance from the Office in order to facilitate the implementation of the Convention.***

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

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

## Dominica

### Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 2(2) of the Convention. Raising the initially specified age for admission to employment or work.* Noting that the Government initially specified a minimum age of 15 years upon ratification, the Committee observes that the Education Act of 1997 provides for a minimum age for admission to work of 16 years of age. ***In this regard, the Committee takes the opportunity to draw the Government's attention to the provisions of Article 2(2) of the Convention which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. This allows the age fixed by the national legislation to be harmonized with***

***that provided for at the international level. The Committee would be grateful if the Government would consider sending a declaration of this nature to the Office.***

*Article 3(1). Minimum age for admission to hazardous work.* The Committee previously noted that, according to section 7(1) of the Employment of Women, Young Persons and Children Act, no young person (under 18) shall be employed or work during the night in any public or private industrial undertaking, other than an undertaking in which only members of the same family are employed. However, the Committee observes that there is no other provision which prohibits the employment of young persons in work which is likely to jeopardize their health, safety or morals. ***In this regard, the Committee requests the Government to take the necessary measures to ensure that the performance of hazardous work is prohibited for all persons under 18 years of age.***

*Article 3(2). Determination of types of hazardous work.* The Committee notes the Government's statement in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), in 2009 that the social partners will be consulted for the determination of the list of types of hazardous work. ***Recalling that, pursuant to Article 3(2) of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, the Committee requests the Government to provide information on any progress made with regard to the determination of the list of types of hazardous work to be prohibited for persons under 18 years.***

*Article 7(3). Determination of types of light work.* The Committee notes that while section 46(3) permits children from the age of 14 to be employed during school vacations (i.e. in light work), but observes that there does not appear to be a determination of the types of light work permitted for these children. In this regard, the Committee recalls that, pursuant to *Article 7(3)* of the Convention, the competent authority shall determine what light work is and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. ***The Committee therefore requests the Government to provide information on any measures taken or envisaged to determine the hours during which and the conditions in which light work may be undertaken by children above the age of 14 during vacations from school, pursuant to Article 7(3) of the Convention.***

*Article 9(3). Keeping of registers.* The Committee previously noted that section 8(1) of the Employment of Women, Young Persons and Children Ordinance provided for the keeping of registers or lists by the employer of all persons employed who are less than *16 years* of age. In this regard, the Committee recalled that *Article 9(3)* of the Convention requires the keeping of such registers for all persons who are less than *18 years* of age. ***Noting an absence of information on this point in the Government's report, the Committee once again requests the Government to take the necessary measures to ensure that registers be kept and made available by the employer in respect of all children under 18 years of age. It requests the Government to provide information on any measures taken in this regard.***

*Application of the Convention in practice.* The Committee notes the Government's statement in its report submitted under Convention No. 182 in 2009 that measures will be taken to broaden the existing mandate of the national inspectorate in order to cover child labour issues, in consultation with the social partners. ***The Committee requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons, extracts from the reports of inspections services and information on the number and nature of violations detected involving children and young persons.***

***The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. The Committee invites the Government to consider technical assistance from the ILO to bring its legislation into conformity with the Convention.***

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

## Eritrea

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

*Article 1 of the Convention. National policy, labour inspection and application of the Convention in practice.* In its previous comments, the Committee noted the Government's indication that it had collected data and information to formulate a national policy and that an upcoming Comprehensive National Child Policy document was expected to strengthen efforts to provide sustained services to children. However, it noted that the UN Human Rights Council (A/HRC/26/L.6 and A/HRC/26/45) in its reports of 2014, continued to highlight child labour in the country, including in hazardous activities such as harvesting and construction. The Committee therefore strongly urged the Government to intensify its efforts to implement concrete measures, such as by adopting a national plan of action to abolish child labour as well as strengthening the capacity of the labour inspection system.

The Committee notes the Government's information, in its report, that considering that a holistic approach is the best solution for the elimination of child labour, the Government has adopted a Comprehensive Child Policy in 2016. It also notes the Government's information that it is in the process of developing a national action plan for the elimination of child labour. In this regard, two members of the Ministry of Labour and Social Welfare (MLSW) have participated in the National Capacity Building Workshop on Child Labour and Forced Labour Data Analysis organized by the ILO in February 2020 in Cairo, Egypt. The Committee further notes the Government's indication that labour inspection plays a critical role in preventing child labour by conducting regular inspections of workplaces and ensuring that conditions of work are respected as prescribed by law. Several efforts are being taken to improve the

number and quality of labour inspections, such as providing trainings to the inspectors. The Government indicates that more than 45 labour inspectors, including new recruits are engaged in inspection throughout the six regions of the country. The Committee further notes the Government's reference to the findings of the Eritrea Labour Force Survey 2015-16 which indicated that among the 809,670 eligible children (referred to as children within the age group of 5–13 who are eligible for study), 16.4 per cent were engaged in some work activities, of whom 71.3 per cent were then currently attending school. The average age at which children start working is 7 years. The main reasons reported for working at early age were "to help in household enterprises" (53 per cent) and "supplement family income" (33.3 per cent). The survey also indicated that while 11.7 per cent of children combined work with schooling, 4.8 per cent of children were involved in child labour either by missing some classes or without going to school at all. In this regard, the Committee notes from the Technical Advisory Mission Report on the Tripartite Inter-ministerial Workshop on the Worst Forms of Child Labour Convention, 1999 (No.182) held in Asmara in March 2019, that the tripartite constituents identified that measures are required to "Strengthen the capacity of labour inspectorate to identify children engaged in child labour with a view to removing them and providing them with assistance". ***While noting the measures taken by the Government, the Committee urges it to intensify its efforts to progressively eliminate child labour in the country, including through the adoption and effective implementation of the National Action plan for the elimination of child labour and the Comprehensive Child Policy. In this regard, the Committee requests the Government to continue to take measures to strengthen the capacity of the labour inspection system in order to adequately monitor and detect cases of child labour in the country. It further requests the Government to provide information on the number of inspections on child labour carried out by the labour inspectors as well as on the number and nature of violations detected and penalties applied. Finally, the Committee requests the Government to continue to provide information on the application of the Convention in practice, in particular statistical data on the employment of children and young persons by age group.***

*Article 2(3) and (4). Age of completion of compulsory schooling and minimum age for admission to employment.* In its previous comments, the Committee noted the Government's indication that education is compulsory for eight years (five years of elementary school and three years of middle school), which would be completed at 14 years of age. It noted the measures taken by the Government to provide free education to all school children up to the middle school level as well as its policies, in particular the Nomadic Education Policy, to make education inclusive to all children. However, the Committee noted from the draft proposal within the Strategic Partnership Cooperation Framework (SPCF) 2013–16 between the Government and the United Nations system and from the Government's fourth periodic report to the Committee on the Rights of the Child (CRC/C/ER/4, paragraph 301 and table 28), a decline in the elementary school enrolment rates. The Committee therefore requested the Government to continue to cooperate with the UN bodies to improve the functioning of, and access to, the education system so as to increase school enrolment rates and reduce school drop-out rates for children at least up to the age of completion of compulsory education, particularly with regard to girls.

The Committee notes the Government's statement that efforts are being taken as a priority to improve the compulsory basic education in the country. In order to counter the challenges and hostilities including capacity and resources, and to a limited extent the cultural obstacles affecting nomadic children and girl's education in some of the lowland areas, basic schools without any barriers are being introduced gradually throughout the country. According to the statistics provided by the Government, in 2017-2018, 654,399 students were enrolled from pre-primary up to secondary level. In the last two decades, school enrolment rates have increased by 96.4 per cent (106.3 per cent for girls), number of teachers by 131 per cent and number of schools by 178 per cent. Moreover, alternative education through Complementary Elementary Education (CEE) has been introduced for out-of-school children as well as to address the challenges in remote and rural areas. In this regard, 8,575 out of school children (46.4 per cent girls) aged 9-14 years benefitted from the CEE in 2016-17. The Committee further notes from the UNICEF Annual Report of 2016 that the ongoing measures to promote access to education resulted in 17,145 out-of-school children including (6,541 girls) from the most disadvantaged areas enrolling in primary education during the 2015-16 academic year. The Committee, however, notes that according to the UNESCO estimates for 2018, the net enrolment rates at primary and secondary level were 51.5 per cent and 41.6 per cent respectively, and the number of out-of-school children was 241,988. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee encourages the Government to pursue its efforts to increase school enrolment, attendance and completion rates, and reduce drop-out rates, particularly of children up to 14 years of age. The Committee requests the Government to provide information on the measures taken in this regard and on the results achieved, including statistical data on the number of children enrolled at the primary and secondary schools.***

*Article 3(2). Determination of the types of hazardous work.* The Committee recalls that the Government has been referring to the upcoming adoption of a list of hazardous activities prohibited to young employees under section 69(1) of the Labour Proclamation since 2007. The Committee urged the Government to finalize this ministerial regulation, without delay.

The Committee notes the Government's information that child labour in Eritrea does not involve hazardous work. However, the MLSW is in the process of finalizing the regulation prescribing the list of types of hazardous work that are prohibited to young persons under 18 years of age. ***The Committee accordingly expresses the firm hope that the ministerial regulation issuing the list of hazardous activities prohibited to persons under the age of 18 will be adopted in the near future. It requests the Government to provide a copy, once it has been adopted.***

*Article 9(3). Keeping of registers by employers.* The Committee previously noted the Government's indication that the requirement for employers to maintain a register of persons who are employed and are under 18 years would be addressed in an upcoming regulation and studies in this regard were ongoing.

The Committee once again notes the Government's indication that the MLSW is still undertaking studies to develop this regulation. ***Noting that the Government has been referring to the adoption of this regulation since 2007, the Committee urges the Government to take the necessary measures to ensure that the regulation concerning the registers to be kept by employers is adopted without delay. It also requests the Government to provide a copy, once it has been adopted.***

***The Committee encourages the Government to seek ILO technical assistance in its efforts to combat child labour.***

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

## Ethiopia

### Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Organisation of Employers (IOE), and the International Trade Union Confederation (ITUC) received on 29 August 2019 and 1 September 2019, respectively. It also notes the detailed discussion which took place at the 108th Session of the Conference Committee on the Application of Standards (CAS) in June 2019, concerning the application by Ethiopia of the Convention.

#### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee noted the various measures taken by the Government to eliminate child labour, including the Ethiopians Fighting Against Child Exploitation (E-FACE) project; the Community Care Coalition whereby in-kind and cash support is used to prevent child labour; as well as the National Action Plan (NAP 2011–17) to prevent child labour exploitation. The Committee observed that according to the 2015 Child Labour Survey results, the number of children aged 5–13 years engaged in child labour was estimated to be 13,139,991 (page 63) with 41.7 per cent aged between 5 and 11 years (page xii).

The Committee notes the Government's information in its 2019 report that within the framework of the NAP 2011–17 to eliminate child labour, several public awareness-raising programmes were conducted on child labour through conversation and media forums reaching about 1,170,904 people in child labour affected areas and 441 labour inspectors were provided with capacity-building training on prevention of child labour. The Committee also notes the Government's indication that on an average, 39,000 inspections were carried out annually in different establishments with a focus on child labour. The Government also indicates that the grassroots community organizations known as Community Care Coalition have made significant contributions through mobilizing community resources to prevent vulnerable children from entering into child labour by supporting their families and providing shelter. Moreover, a comprehensive child labour policy has been issued in consultation with the social partners and relevant stakeholders to address child labour. The Committee further notes from the document on the E-FACE project that to date this project has impacted the lives of more than 18,000 children engaged in child labour allowing them to attend school and reducing the risk of dropout.

The Committee further notes the Government's information in its supplementary report that in December 2019, the Government launched the Alliance 8.7, the global partnership for eradicating forced labour, child labour and human trafficking around the world. In addition, in response to the COVID-19 pandemic, child protection activities were provided to vulnerable children and a significant number of street children were protected from socio-economic hazards. Moreover, close monitoring and support of community-based protection activities for families and children in need have been set in place. ***While noting the measures taken by the Government, the Committee urges the Government to continue to take***

***the necessary measures for the progressive elimination of child labour. It requests the Government to continue to provide specific information on the concrete measures taken in this regard as well as the results achieved. The Committee also requests the Government to provide detailed 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 violations detected and penalties applied involving children and young persons.***

*Article 2(1). Scope of application.* The Committee previously noted that although section 89(2) of the Labour Law Proclamation No. 42 of 1993 prohibits the employment of persons under 14 years of age, the provisions of the Labour Law did not cover work performed outside an employment relationship. It noted the Government's indication that the Constitution provides for the right of children to be protected from any forms of exploitative labour, without any discrimination, whether employed or self-employed, working in the formal or informal sector. The Committee noted that according to the 2015 Child Labour Survey results, 89.4 per cent of the children engaged in child labour worked in the agricultural, forestry and fishing sectors and in wholesale and retail trade sector. The majority of children performing economic activities were working as unpaid family workers (95.6 per cent) (page xii). Noting with concern the high number of children working in the informal economy, the Committee requested the Government to take the necessary measures to ensure that all children under 14 years of age, particularly children working on their own account or in the informal economy, benefit from the protection laid down by the Convention.

The Committee notes that the Conference Committee, in its concluding observations, urged the Government to strengthen the capacity of the labour inspectorate and competent services, including human, material and technical resources and training, particularly in the informal economy. It also notes that the IOE, in its observations, commended the Government for taking the following steps to address the gaps in the Labour Law, such as: (i) extending the labour advisory services in the informal sector; and (ii) strengthening the labour inspectorate system in the country to make it accessible to all enterprises and workplaces.

The Committee notes the Government's information in its 2019 report that measures are being taken to extend labour advisory services in the informal economy with the aim of protecting the rights of all workers, including young workers working without an employment relationship such as work on their own account or in the informal economy. The Government also indicates that efforts are being made to strengthen the labour inspectorate system in the country so as to ensure that such services are effectively accessible to all enterprises and workplaces. ***The Committee requests the Government to take the necessary measures to ensure that all children under 14 years of age, particularly children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. In this regard, the Committee requests the Government to continue to take measures to strengthen the capacities and expand the reach of the labour inspectorate so that it can adequately monitor and detect cases of child labour, particularly involving children working in the informal economy, and on their own account. It requests the Government to provide information on any measures taken or progress made in this regard.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted the Government's indication that it had started the process of drafting legislation which aims at making primary education compulsory. It also noted that according to the Child Labour Survey of 2015, the school attendance rate was 61.3 per cent among children aged 5–17 years. Moreover, 2,830,842 children in the 5–17 years age group (7.6 per cent of the total number of children in the country), dropped out of school with the dropout rate higher among working children (10.9 per cent) than non-working children (4.1 per cent) and among working boys (11.6 per cent) than working girls (9.8 per cent) (pages 86 and 88). The Committee further noted that the United Nations Committee on the Rights of the Child (CRC), in its 2015 concluding observations, expressed concern at: (i) the lack of national legislation on free and compulsory education; (ii) the persistent regional disparities in enrolment rates and the high number of school-aged children, particularly girls, who remained out of school; as well as (iii) the high dropout rates and the significant low enrolment rates in pre-primary education and secondary education (CRC/C/ETH/CO/4-5, paragraph 61).

The Committee notes the statement made by the Government representative of Ethiopia to the Conference Committee that the School Feeding Programme supplemented by specific interventions have significantly improved inclusiveness, participation and achievements in education. The Government representative also stated that a rural–urban Productive Safety Net Programme to improve the income of targeted poor households in the rural and urban areas and the Ethiopian Education Development Roadmap, 2018–2030 to address the gap in access to quality education has been developed. Moreover, Alternative Basic Education modalities are being implemented, such as mobile schools for children of pastoral and semi-pastoral communities. It notes that the Conference Committee, in its conclusions, urged the Government to introduce legislative measures to provide free and compulsory education up to the minimum age of admission to employment of 14 years and ensure its effective implementation as well

as to improve the functioning of the educational system through measures to increase the school enrolment rates and decrease dropout rates.

The Committee notes the observations made by ITUC that there is a close link between compulsory education and the abolition of child labour and hence it is essential that Ethiopia introduce compulsory schooling at least up to the minimum age for admission to employment.

The Committee notes the Government's information in its 2019 report that it is committed to achieving universal and quality primary education for all school-aged children. Accordingly, it is implementing the Education and Training Policy and the Education Sector Development Programme (ESD) (2016–20) which has led to the achievement of the following results: (i) the number of primary schools has increased from 33,373 in 2014–15 to 36,466 in 2017–18; (ii) the net enrolment rate has increased from 94.3 per cent in 2014–15 to nearly 100 per cent in 2017–18 with a gender parity index of 0.9 per cent; and (iii) the school dropout rates have decreased from 18 per cent in 2008–09 to 9 per cent in 2013–14. The Government further indicates that the Urban Productive Safety Net Programme which has the objective of providing access to basic nutrition through the school feeding programme to over 300,000 marginalized school children is being implemented in selected urban areas.

The Committee notes, from the UNICEF Annual Report 2018 that while the enrolment rate in primary education has improved (which has tripled from 2000 to 2016), the transition from primary to secondary education remains a bottleneck, with children in rural areas predisposed to dropping out of school and only 25 per cent of secondary school-aged girls attending secondary school. Furthermore, according to the UNICEF report entitled *Multidimensional Child Deprivation in Ethiopia, National Estimates,* 2018, 50 per cent of children aged 5–17 years were deprived of education in 2016. The proportion of children in rural areas aged 7–17 years who are not attending school is more than double that of children residing in urban areas. The Committee finally notes that the United Nations Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in its concluding observations of March 2019 remained concerned that primary education is still not compulsory and at the high dropout and low completion rates of girls at the primary level (CEDAW/C/ETH/CO/8, paragraph 33(a)). ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee once again urges the Government to take the necessary steps to make education compulsory up to the minimum age of admission to employment of 14 years in accordance with Article 2(3) of the Convention. While noting the measures taken by the Government, the Committee strongly encourages the Government to pursue its efforts to increase school enrolment rates, decrease dropout rates and ensure completion of compulsory education with a view to preventing children under 14 years of age from being engaged in child labour.***

*Article 3. Determination of hazardous work*. The Committee previously noted that the Decree of the Ministry of Labour and Social Affairs of 2 September 1997 concerning the prohibition of work for young workers which contained a detailed list of types of hazardous work was undergoing revision. The Committee observed that, according to the Child Labour Survey, the rate of hazardous work among children aged 5–17 years was 23.3 per cent (28 per cent for boys versus 18.2 per cent for girls). The average hours of work per week performed by children engaged in hazardous work in this age group was 41.4 hours with 50 per cent of them working more than 42 hours per week. The Committee also noted that among children engaged in hazardous work, 87.5 per cent work in the agricultural sector, and 66.2 per cent are involved in other hazardous working conditions such as night work, working in an unhealthy environment or using unsafe equipment at work (page xiii). The Committee urged the Government to strengthen its efforts to ensure that, in practice, children under 18 years of age were not engaged in hazardous work. It also requested the Government to indicate whether a new list of types of hazardous work was adopted and to supply a copy.

The Committee notes the Government's information in its 2019 report that the list of activities prohibited to young persons has been revised in consultation with social partners and a directive has been issued by the Ministry of Labour and Social Affairs in 2013 in this regard. It notes the unofficial translated copy of the directive provided by the Government which contains a list of 16 activities which are harmful to the health, safety and well-being of young workers and therefore prohibited. This list includes: work in transport of passengers and goods by road, railway, air and waterways; works related to handling of heavy material; fishing at sea; underground work at mines and quarries; works connected with electric power generation plants or transmission lines; work at elevation in construction; work on production of alcoholic drinks and drugs; work in extremely hot and cold conditions; work exposed to ionizing and non-ionizing, x-rays and ultraviolet rays; work with flammable and explosive materials; work with toxic chemicals and pesticides; and all works that will have adverse effects on the physical and psychological development of young persons. The list also provides the maximum weight limits that could be carried by young persons. ***The Committee requests the Government to provide information on the application in practice of the revised list under the directive of 2013, particularly for hazardous work in agriculture, including statistics on the number and nature of violations reported and penalties imposed. The Committee reminds the Government that it may avail itself of technical assistance from the ILO with respect to the issues raised in its present comment.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Ghana

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes that the Government did not send the report requested by the Committee. It therefore reiterates its previous observation as follows.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery and practices similar to slavery. Sale and trafficking of children.* The Committee previously noted the Government's information that an Anti-Human Trafficking Unit had been established under the Human Trafficking Act, 2005. It also noted from the written replies of the Government to the list of issues in relation to the initial report to the United Nations Human Rights Committee regarding the International Covenant on Civil and Political Rights of 13 June 2016, that the Human Trafficking Legislative Instrument (L.I. 2219) was passed in November 2015 in order to aid effective implementation of the Human Trafficking Act (CCPR/C/GHA/Q/1/Add.1, paragraph 74). The Committee requested the Government to provide information on the application of the Human Trafficking Act and the Human Trafficking Legislative Instrument, 2015, in practice.

The Committee notes with ***regret*** the absence of information in the Government's report. The Committee notes from the document on the National Plan of Action (NPA) for the Elimination of Human Trafficking in Ghana 2017–21 that the Anti-Human Trafficking Unit of the Ghana Police Service conducts investigations of cases of trafficking of persons and seeks to prosecute offenders. Moreover, the Anti-Human Smuggling and Trafficking in Persons Unit of the Ghana Immigration Service investigates and arrests human trafficking and smuggling offenders while also building the capacities of immigration officials to detect such cases. However, according to this document, Ghana continues to be a source, transit and destination country for trafficking of persons, while trafficking of girls and boys for labour and sexual exploitation are more prevalent within the country than transnational trafficking. The document further indicates that children are subjected to being trafficked into street hawking, begging, portering, artisanal gold mining, quarrying, herding and agriculture. ***The Committee requests the Government to take the necessary measures to ensure that, in practice, thorough investigations and robust prosecutions are carried out for persons who engage in the trafficking of children, and that sufficiently effective and dissuasive sanctions are imposed. In this regard, the Committee once again requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied by the Anti-Human Trafficking Unit and the Anti-Human Smuggling and Trafficking in Persons Unit for the offence of trafficking in persons under 18 years of age, in accordance with the provisions of the Human Trafficking Act.***

*Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that section 101A of the Criminal Offences Act, 1960 (Act 29), as amended by the Criminal Offences (Amendment) Act of 2012 establishes penalties for the sexual exploitation of persons defined as the use of a person for sexual activity that causes or is likely to cause serious physical and emotional injury or in prostitution or pornography. The Committee observed that this provision only applies to children under *16 years* of age. It therefore requested the Government to take the necessary measures to ensure that its legislation is amended in order to protect all persons under the age of 18 years from the production of pornography and pornographic performances.

The Committee notes with ***regret*** that the Government has not provided any information in this respect. The Committee therefore once again recalls that, in accordance with *Article 3(b)* of the Convention, the use, procuring or offering of children for the production of pornography and for pornographic performance is one of the worst forms of child labour and that under the terms of *Article 2*, the term "child" shall apply to all persons under the age of 18. ***The Committee therefore urges the Government to take the necessary measures to bring its legislation into conformity with Article 3(b) of the Convention in order to ensure that all children under the age of 18 years are protected from the offences related to the use, procuring or offering of children for the production of pornography and for pornographic performances. The Committee also requests the Government to provide information on the application of section 101A of the Criminal Offences Act, 1960 in practice, including the number of infringements reported, investigations, prosecutions, convictions and penalties applied in this regard.***

*Clause (d) and Article 7(2)(a) and (b). Hazardous work in cocoa farming, and preventing children from being engaged in and removing them from such hazardous work.* In its previous comments, the Committee noted with concern the significant number of children below 18 years of age engaged in hazardous conditions of work in the agricultural sector, with an estimated 10 per cent of them working in cocoa-specific hazardous activities. It urged the Government to take the necessary measures to eliminate hazardous child labour in the cocoa industry.

The Committee notes the Government's information in its report that the Government, through the Ghana Cocoa Board and in collaboration with other social partners such as the International Cocoa Initiatives, WINROCK, and the World Cocoa Foundation have carried out a number of activities aimed at preventing child labour in the cocoa sector. These measures include: sensitization of staff and farmers in the cocoa growing communities; withdrawal and rehabilitation of children found in hazardous child labour conditions; and the provision of education and health facilities to such children. The Committee also notes from the ILO publication *Good Practices and Lessons Learned in Cocoa Communities in Ghana* of the ILO–IPEC Cocoa Communities Project (CCP), 2015, that the project, which was implemented in 40 communities in seven districts of Ghana, focused mainly on social mobilization and community action planning, promotion of quality education, sustainable livelihoods for households, and child labour monitoring. It notes from a report by Understanding Children's Work (UCW) entitled *Child Labour and the Youth Decent Work Deficit in Ghana,* 2016, that under the CCP project, over 5,400 children in or at risk of child labour were provided with educational or vocational services and more than 2,200 households were reached with livelihood services. The Committee, however, notes from a UCW report of 2017, entitled *Not Just Cocoa: Child Labour in the Agricultural Sector in Ghana* that the incidence of children's employment in cocoa appears to have risen faster than their employment elsewhere. Almost 9 per cent of all children (about 464,000 children) in the principal cocoa growing regions are involved in child labour in cocoa, of whom 84 per cent (294,000 children) are exposed to hazardous work, resulting in injuries, including serious ones. The majority of these children are working as unpaid family workers. The Committee must express its ***deep concern*** at the high number of children engaged in hazardous types of work in cocoa farming. ***The Committee accordingly urges the Government to intensify its efforts to prevent children under 18 years of age from being engaged in hazardous types of work in this sector. It requests the Government to provide information on the measures taken in this regard as well as the measures taken to ensure that child victims of hazardous types of work are removed from such work and rehabilitated,*** particularly ***by ensuring their access to free basic education and vocational training.***

*Article 4(1) and (3). Determination and revision of the list of hazardous types of work.* The Committee previously noted the Government's indication that it envisaged to review and update as necessary section 91 of the Children's Act, including the list of the types of hazardous work so as to be in compliance with the Convention. It noted that the National Steering Committee of the Child Labour Unit (CLU) had validated a list of hazardous types of work under the Hazardous Child Labour Activity Framework, entitled the *Ghana Hazardous Child Labour List* (GHAHCL), which had not yet been adopted as law.

The Committee notes the Government's statement that the process for comprehensive review on hazardous activities has begun and that measures are being taken to adopt and incorporate the GHAHCL into the Children's Act. ***Noting that the Government has been referring to the revision of the list of hazardous types of work since 2008, the Committee urges the Government to take the necessary measures, without delay, to ensure the finalization and adoption of the GHAHCL and its incorporation into the Children's Act. It requests the Government to provide information on any progress made in this regard and to provide a copy, once it has been adopted.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* 1. *Trafficking in the fishing industry and domestic service.* The Committee previously noted the information from a study carried out by ILO–IPEC that children are engaged in hazardous fishing activities and are confronted with poor working conditions. Among the children engaged in fishing activities, 11 per cent were aged 5–9 years and 20 per cent were aged 10–14 years. Furthermore, 47 per cent of children engaged in fishing in Lake Volta were victims of trafficking, 3 per cent were involved in bondage, 45 per cent were engaged in forced labour and 3 per cent were engaged in sexual slavery. Expressing its deep concern at the prevalence of children who have been trafficked or sold into fishing activities, or are otherwise engaged in hazardous fishing activities in the Lake Volta region, the Committee urged the Government to strengthen its efforts to ensure the removal of children from this worst form of child labour and to provide them with appropriate support services for their rehabilitation and social integration.

The Committee notes with ***deep regret*** the absence of information in the Government's report on this point. The Committee notes from the International Organization for Migration–Ghana 2018 Review that the shelter dedicated to child victims of trafficking has been renovated and opened. About 40 children who were recently removed from trafficking situations were housed in this shelter. These children were provided assistance including psychosocial counselling, family tracing and nutritional feeding. The Committee, however, notes from the document concerning the National Plan of Action (NPA) for the Elimination of Human Trafficking in Ghana 2017–21 that boys and girls are trafficked into forced labour in fishing and the domestic service, in addition to sex trafficking which is most prevalent in the Volta region and in the oil-producing western region. This document also indicates that across the 20 communities in the Volta and central regions, 35.2 per cent of households consisted of children who had been subjected

to trafficking and exploitation primarily in the fishing industry and domestic servitude. The Committee ***deplores*** the significant number of children along the Volta and central regions of Ghana, who are subjected to trafficking, mainly for exploitation in the fishing industry and domestic servitude. ***The Committee therefore urges the Government to take effective and time-bound measures, including through the NPA for the Elimination of Human Trafficking, to prevent children from becoming victims of trafficking and to remove child victims from the worst forms of child labour and ensure their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard and the results achieved in terms of the number of child victims of trafficking who have been removed and rehabilitated. Please provide data disaggregated by gender and age.***

2. *Trokosi system.* The Committee previously noted that, despite the Government's efforts to withdraw children from *trokosi* (a ritual in which teenage girls are pledged to a period of service at a local shrine to atone for another family member's sins), the situation remained prevalent in the country. It also noted that the United Nations Human Rights Committee in its concluding observations of 9 August 2016 (CCPR/C/GHA/CO/1, paragraph 17) expressed concern about the persistence of certain harmful practices, including the *trokosi* system, notwithstanding their prohibition by law. The Committee strongly urged the Government to take immediate and effective measures to prevent the engagement of children into *trokosi* ritual servitude and to put an end to this traditional practice as a matter of urgency.

The Committee notes with ***deep regret*** the absence of any information in the Government's report on its programmatic measures to prevent and remove children from the *trokosi* system. ***The Committee therefore once again urges the Government to indicate the measures taken or envisaged to protect children from the practice of trokosi system as well as to withdraw child victims of such practices and to provide for their rehabilitation and social integration. It once again requests the Government to provide information on the number of children under 18 years of age who are affected by the trokosi system in the country, and on how many have been removed from this system and rehabilitated.***

***In light of the situation described above, the Committee must express its deep concern at the repeated failure from the Government to provide information on the action taken to address, as a matter of urgency, the situation of victims of worst forms of child labour, including children trafficked for exploitation in the fishing industry and domestic servitude, engaged in hazardous works in the cocoa farming or exploited in harmful practices such as the Trokosi system. The Committee deplores the lack of progress to remove children from these worst forms of child labour, protect them and ensure their rehabilitation***.

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

***[The Government is asked to supply full particulars to the Conference at its 109th Session and to reply in full to the present comments in 2021.]***

## Guyana

### Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 1 of the Convention. National policy for the elimination of child labour. National action plan.* The Committee previously noted that the Government reiterated its commitment to adopting a national policy designed to ensure the effective abolition of child labour in the country since 2001. The Committee also noted that, although the Government undertook a number of policy measures aimed at tackling child labour through education programmes, in particular under the ILO–IPEC project entitled "Tackle child labour through education" (TACKLE project), it continued to indicate that a National Plan of Action for Children (NPAC) was under development. The Committee notes that the Government's report does not contain any new information in this regard. ***The Committee therefore once again urges the Government to strengthen its efforts to finalize the NPAC and to provide a copy of it in the very near future. Furthermore, noting the Government's previous indication that the National Steering Committee on Child Labour – which had initiated and drafted a national action plan to eliminate and prevent child labour – is no longer functioning, the Committee requests the Government to provide updated information on the measures taken or envisaged to finalize this process.***

*Article 3(3). Authorization to work in hazardous employment from the age of 16 years.* In its previous comments, the Committee observed that section 6(b) of Act No. 9 of 1999 on the employment of young persons and children (hereafter Act No. 9 of 1999) grants the Minister discretion to authorize, through regulations, the engagement of young persons between the ages of 16 and 18 years in hazardous work. The Committee also observed that, although sections 41 and 46 of the Occupational Safety and Health Act, 1997 (OSHA), aim to prevent young persons from undertaking employment activities that could impede their physical health or emotional development, the Government had identified difficulties in monitoring and enforcing those provisions. The Government accordingly indicated that Act No. 9 of 1999 would be amended to ensure that the protections afforded under the Act are extended to all young persons under the age of 18 years.

The Committee noted that the Government's previous report did not contain any new information and merely stated that no ministerial regulations had been issued and that the OSHA provisions ensure that young persons between 16 and 18 years who are employed in hazardous work receive adequate specific vocational training. However, the Committee noted the inadequate measures for monitoring and enforcing the OSHA

provisions and that, notwithstanding the significant number of children involved in hazardous work, only three such cases had been reported to the Government's reporting mechanism.

The Committee notes with ***deep concern*** that the Government's report provides no new information concerning the process of amending Act No. 9 of 1999, despite its repeated commitment over the years to do so. It once again draws the Government's attention to paragraph 381 of the 2012 General Survey on the fundamental Conventions, which stresses that compliance with *Article 3(3)* of the Convention requires that any hazardous work for persons from the ages of 16 to 18 years be authorized only upon the conditions that the health, safety and morals of the young persons concerned are fully protected and that they, in practice, receive adequate specific vocational training. ***The Committee accordingly once again urges the Government to take measures to amend Act No. 9 of 1999 in the near future so as to ensure conformity with Article 3(3) of the Convention by providing adequate protection to young persons between the ages of 16 and 18, and to supply a copy of the amendments once they have been finalized. Moreover, recalling the Government's indication that efforts are under way with the tripartite partners to include additional areas of work on the hazardous work list, the Committee requests the Government to supply a copy of this amended list once it becomes available.***

*Article 9(3). Keeping of registers.* Following its previous comments, the Committee notes the Government's indication that section 86(a) of the OSHA, Chapter 99:10, provides for the obligation of employers of industrial establishments to record, and keep in a register, the prescribed particulars of all employees under the age of 18 years. ***The Committee requests that the Government indicate which provisions establish the same obligation for the employment of young persons under 18 years of age in non-industrial undertakings.***

*Labour inspection and practical application of the Convention.* The Committee previously noted the results of the Multiple Cluster Indicator Survey identifying a high percentage of working children in the country. The Committee also noted the indication of the International Trade Union Confederation (ITUC) that labour inspectors fail to effectively enforce the applicable legislation and that child labour was particularly prevalent in the informal economy.

In response, the Government simply indicated that its labour inspectors routinely conduct workplace inspections and that there had been no evidence of child labour. Nevertheless, the Committee noted a three-year programme which aimed to, among others, strengthen the capacity of national and local authorities in the formulation, implementation and enforcement of the legal framework on child labour and which would include a focus on child labour in the informal economy. ***Noting the absence of information provided in this respect, the Committee once again requests that the Government strengthen its efforts to combat child labour, including in the informal economy, and to provide information on the results achieved in this regard. Furthermore, recalling that the Government is establishing a baseline survey on child labour, the Committee again requests the Government to provide information concerning the results of the survey.***

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

## Haiti

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2007)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 4 September 2019. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 30 August 2017 and 29 August 2018, concerning the weakness of the law enforcement bodies in combating trafficking in children, and the absence of rehabilitation and reintegration measures for *restavèks* children (child domestic workers).

The Committee notes the Government's communication received on 30 October 2018 in which it informs the Committee that, further to the conclusions of the Conference Committee, it has requested ILO technical assistance with a view to helping in the presentation of the reports due, strengthening the inspection services, consolidating social dialogue for the continuation of social reforms, and addressing the other points raised by the Conference Committee. The Government adds that it hopes to receive the requested assistance before the next session of the International Labour Conference. The Committee hopes that this technical assistance will be provided without delay.

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

The Committee notes that the Law No. CL/2014-0010 of 2 June 2014 on the fight against trafficking in persons has been adopted.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee noted that, according to the report of the United Nations Special Rapporteur on contemporary forms of slavery, a new trend has been observed with regard to the employment of children as domestic workers (designated by the Creole term *restavèks*). This consists of the emergence of persons who recruit children from rural areas to work as domestic servants in urban families and outside the home in markets. The Special Rapporteur noted that this new trend has caused many observers to describe the phenomenon as trafficking, since parents are now handing their children over to strangers, whereas previously they entrusted the children to relatives. The Committee noted the observations of the International Trade Union Confederation (ITUC) that smuggling and trafficking in children was continuing, particularly towards the Dominican Republic. The ITUC has gathered serious eyewitness

reports of sexual abuse and violence, even including murder, against young women and young girls who have been trafficked, particularly by Dominican military personnel and expressed concern at the fact that there does not appear to be a law under which those responsible for trafficking in persons can be brought to justice and that a draft legislation was to be adopted by the Parliament.

The Committee notes with ***interest*** the adoption of Law No. CL/2014-0010 of 2 June 2014 on the fight against trafficking in persons. The Law provides that trafficking in children, meaning the procuring, enlistment, transfer, transportation, accommodation or reception of a child for the purposes of exploitation constitutes an aggravating circumstance giving rise to life imprisonment (sections 11 and 21). The Committee notes, however, that, according to its 2014 concluding observations (CCPR/C/HTI/CO/1, paragraph 14), the Human Rights Committee remains concerned about the continuing exploitation of *restavèks* children and the lack of statistics on, and results from, the investigations into the perpetrators of trafficking. Similarly, the Committee notes that, according to the 2015 report of the independent expert on the human rights situation in Haiti (A/HRC/28/82, paragraph 65 with reference to A/HRC/25/71, paragraph 56), the *restavèks* phenomenon is the consequence of the weakness of the rule of law and those children are systematically unpaid, subjected to forced labour, and exposed to physical and/or verbal violence. Their number was estimated at 225,000 by UNICEF in 2012. ***The Committee, therefore, urges the Government to take the necessary measures to ensure the effective implementation of Law No. CL/2014-0010, in particular in ensuring that in-depth investigations and effective prosecutions are completed with regard to perpetrators of trafficking of children under 18 years of age. The Committee also requests the Government to provide statistical data on the application of the law in practice, including the number and nature of the violations reported, investigations, prosecutions, convictions and the penal sanctions applied.***

*Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic labour.* In its previous comments, the Committee noted the situation of hundreds of thousands of *restavèk* children who are often exploited under conditions that qualify as forced labour. It noted that in practice many of these children, some of whom are only 4 or 5 years old, are the victims of exploitation, are obliged to work long hours without pay, face all kinds of discrimination and bullying, receive poor lodging and food and are often victims of physical, psychological and sexual abuse. In addition, very few of them attend school. The Committee also noted the repeal of Chapter IX of Title V of the Labour Code, relating to children in service, by the Act of 2003 for the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhumane treatment of children (the Act of 2003). It noted that the prohibition set out in section 2(1) of the Act of 2003 covers the exploitation of children, including servitude, forced or compulsory labour, forced services and work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children, without however establishing penalties for violations of its provisions. The Committee noted that the repealed provisions included section 341 of the Labour Code, under which a child from the age of 12 years could be entrusted to a family to be engaged in domestic work. The Committee nevertheless observed that section 3 of the Act of 2003 provides that a child may be entrusted to a host family in the context of a relationship of assistance and solidarity.

The Committee noted previously that the Special Rapporteur, in her report, expressed deep concern at the vagueness of the concept of assistance and solidarity and considered that the provisions of the Act of 2003 allow the practice of *restavèk* to be perpetuated. According to the report of the Special Rapporteur, the number of children working as *restavèk* is between 150,000 and 500,000 (paragraph 17), which represents about one in ten children in Haiti (paragraph 23). Following interviews with *restavèk* children, the Special Rapporteur ascertained that all of them were given heavy workloads by their host families, which were often incompatible with their full physical and mental development (paragraph 25). Moreover, the Special Rapporteur was told that these children are often ill-treated and subjected to physical, psychological and sexual abuse (paragraph 35). Representatives of the Government and of civil society pointed out that cases of children being beaten and burnt were routinely reported (paragraph 37). The Committee noted that, in view of these findings, the Special Rapporteur described the *restavèk* system as a contemporary form of slavery.

The Committee notes the ITUC's allegations that the earthquake of 12 January 2010 resulted in an abrupt deterioration in the living conditions of the population of Haiti and increasingly precarious working conditions. According to the ITUC, an increasing number of children are engaged as *restavèk* and it is highly probable that their conditions have deteriorated further. Many of the eyewitness accounts gathered by the ITUC refer to extremely arduous working conditions, and exploitation is often combined with degrading working conditions, very long hours of work, the absence of leave and sexual exploitation and situations of extreme violence.

The Committee notes the Government's recognition that the engagement of *restavèk* children in domestic work is similar to forced labour. It once again expresses ***deep concern*** at the exploitation of children under 18 years of age in domestic work performed under conditions similar to slavery and in hazardous conditions. It once again reminds the Government that, under the terms of *Article 3(a)* and *(d)* of the Convention, work or employment by children under 18 years of age under conditions that are similar to slavery or that are hazardous comprise the worst forms of child labour and, under the terms of *Article 1*, are to be eliminated as a matter of urgency. ***The Committee requests the Government to take immediate and effective measures to ensure in law and practice that children under 18 years of age are not engaged as domestic workers under conditions similar to slavery or in hazardous conditions, taking into account the special situation of girls. In this respect, it urges the Government to take the necessary measures to amend the provisions of the national legislation, and particularly section 3 of the Act of 2003, which allow the continuation of the practice of restavèk. The Committee also requests the Government to take the necessary measures to ensure that in-depth investigations are conducted and effective prosecutions of persons subjecting children under 18 years of age to forced domestic work or to hazardous domestic labour, and that sufficiently effective and dissuasive penalties are imposed in practice.***

*Article 5. Monitoring mechanisms. Child protection brigade.* The Committee notes the ITUC's allegation that a child protection brigade (BPM) exists in Haiti protecting the borders. However, the ITUC indicates that the corruption of officials on both sides of the border has not been eradicated and that the routes for trafficking in persons avoid the four official border posts and pass through remote locations where more serious situations of abuse against the life and integrity of migrants probably occur.

The Committee notes the Government's indication that the BPM is a specialized police unit which arrests traffickers, who are then brought to justice. However, the Government adds that, during judicial inquiries,

procedural issues are often used by those charged to escape justice. The Committee is bound to express ***concern*** at the weakness of the monitoring mechanisms in preventing the phenomenon of trafficking in children for exploitation. ***The Committee requests the Government to take the necessary measures to strengthen the capacity of the BPM to monitor and combat trafficking in children under 18 years of age and to bring those guilty to justice. It requests the Government to provide information on the measures adopted in this respect and the results achieved.***

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Sale and trafficking*. In its previous comments, the Committee noted that, according to the United Nations Office on Drugs and Crime report of February 2009: *Global Report on Trafficking in Persons,* no system exists to provide the victims of trafficking with care or assistance, nor are there any reception centres for victims of trafficking. It also noted that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations (CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 26), expressed concern at the lack of reception centres for women and girls who are victims of trafficking.

The Committee notes the ITUC's allegations that there is a public system of care and assistance for persons who are victims of trafficking. The reports gathered by the ITUC indicate that victims are referred to the police forces, which relay them to the Social Welfare and Research Institute (IBESR), which then places them in reception centres.

The Committee notes the Government's indication that a pilot social protection programme was envisaged, but that the earthquake of 12 January 2010 undermined the implementation of the programme. ***The Committee urges the Government to take effective measures for the provision of the necessary and appropriate direct assistance for the removal of child victims of sale and trafficking and for their rehabilitation and social integration. In this respect, it requests the Government to provide information on the number of children under 18 years of age who are victims of trafficking and who have been placed in reception centres through the police forces and the IBESR.***

*Clause (d). Identifying and reaching out to children at special risk. Restavèk children.* In its previous comments, the Committee noted the existence of programmes for the reintegration of *restavèk* children established by the IBESR in cooperation with various international and non-governmental organizations. It noted that these programmes focus on reintegration in the family setting with a view to promoting the social and psychological development of the children concerned. However, it noted that the Committee on the Rights of the Child, in its concluding observations, had expressed deep concern at the situation of *restavèk* children placed in domestic service and recommended that the Government take urgent steps to ensure that *restavèk* children are provided with physical and psychological rehabilitation and social reintegration services (CRC/C/15/Add.202, 18 March 2003, paragraphs 56 and 57).

The Committee notes the ITUC's indications that it has been informed of initiatives for the reintegration of *restavèk* children implemented, among others, with the support of UNICEF and the International Organization for Migration (IOM). While welcoming these initiatives, the ITUC calls on the Government to ensure that these programmes continue to be combined with measures intended to improve the living conditions of the families of origin of the children.

The Committee notes the Government's indication that cases of the ill-treatment of children in domestic service are taken up by the IBESR, which is responsible for placing them in families for the purposes of their physical and psychological rehabilitation. However, the Government recognizes that there are still only a few such cases. ***The Committee urges the Government to intensify its efforts to ensure that restavèk children benefit from physical and psychological rehabilitation and social integration services in the framework of programmes for the reintegration of restavèk children or through the IBESR.***

*Article 8. International cooperation. Sale and trafficking of children.* The Committee previously noted that the Ministry of Social Affairs and Labour, in cooperation with the Ministry of Foreign Affairs, was studying the problem of the exploitation of persons in sugar cane plantations in the Dominican Republic and of children reduced to begging in that country, and intends to engage in bilateral negotiations with a view to resolving the situation. It also noted that the CEDAW, in its concluding observations (CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 27), encourages the Government "to conduct research on the root causes of trafficking and to enhance bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic, to prevent trafficking and bring perpetrators to justice".

The Committee notes once again that the Government's report does not contain information on this subject. ***It once again requests the Government to provide information in its next report on the progress made in the negotiations for the adoption of a bilateral agreement with the Dominican Republic.***

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

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

## Kenya

### Minimum Age Convention, 1973 (No. 138) (ratification: 1979)

*Article 1 of the Convention. National policy and application of the Convention in practice.* The Committee previously noted the Government's indication that it had established several social support programmes, including the Cash Transfer Programmes to Orphans and Vulnerable Children (CT–OVC); Urban Food Subsidy; and several bursaries such as the Presidential Bursary Scheme for Orphans and Vulnerable Children. It further noted several activities undertaken by the ILO–IPEC, through the Global Action Programme (GAP 11) as well as the achievements made under the Support to the National Action Plan (SNAP) project. The Committee, however, noted from the SNAP project report that child labour remained a developmental challenge in Kenya that was linked to issues such as access to education, skills

training and related services, social protection and the fight against poverty. The Committee therefore strongly encouraged the Government to strengthen its efforts to improve the situation of children under the age of 16 years and to ensure the progressive elimination of child labour in the country.

The Committee notes the detailed information provided by the Government in its report on the measures taken to eliminate child labour through improving the functioning of the educational system. In this regard, the Committee notes the measures taken to improve school enrolment and attendance rates and reduce drop-out rates, such as the implementation of: (i) free primary education policy; (ii) provision for primary school infrastructure improvement grants; and (iii) the implementation of feeding programmes in selected primary schools in arid and semi-arid lands (ASAL), slums and poverty-stricken areas.

The Committee further notes the information from the ILO website that in October 2016, the National Assembly of Kenya adopted a National Policy on Elimination of Child Labour (NPCL) which aims at building synergies and mainstreaming child labour interventions in national, county and sectoral policies. The National Policy focuses on strategies that are aimed at the prevention, identification, withdrawal, rehabilitation and reintegration of children involved in all forms of child labour. It also notes from the Government's report to the Human Rights Council that a National Plan of Action (NPA) for Children 2015-2022 has been adopted which proposes to implement programmes for children (A/HRC/WG.6/35/KEN/1, paragraph 16).

However, the Committee notes the Government's further indication that 17 per cent of children aged between 5-17 years are involved in child labour with the agricultural and domestic sectors being the main areas where child labour is more prevalent. The Committee further notes from the UNICEF Situation Analysis of Children and Women in Kenya, 2017 that a total of 9.5 million children in Kenya are experiencing multidimensional child poverty. While noting the measures taken by the Government, the Committee must express its ***concern*** at the significant number of children who are involved in child labour and are at risk of being engaged in child labour. ***The Committee therefore urges the Government to intensify its efforts to improve the situation of children under the age of 16 years and to ensure the progressive elimination of child labour in the country. It requests the Government to continue to provide specific information on the concrete measures taken in this regard, including the measures taken within the framework of the NCLP and the NPA 2015-2022 as well as the results achieved. The Committee also requests the Government to provide detailed 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 violations detected and penalties applied involving children and young persons.***

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

*Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Trafficking of children.* The Committee notes from the Assessment Report on Human Trafficking Situation in the Coastal Region of Kenya, 2018 by the International Organization for Migration (IOM Assessment Report), that Kenya has been identified as a source, transit and destination country for men, women and children subjected to forced labour and sex trafficking. The IOM has documented that internal trafficking occurs within Kenya mainly for purposes of domestic labour and sexual exploitation, while international or cross-border trafficking occurs for purposes of forced labour, domestic servitude and sexual exploitation. Child trafficking constitutes the main category of cases reported in the country and children are trafficked to work as domestic labourers, work in farming, fisheries, begging and for sex work in the coastal region of Kenya. This report also indicates that trafficking in persons in the coastal region of Kenya has been increasing with the most prevalent forms being trafficking for labour and sexual exploitation and child trafficking. The Committee also notes that the Committee on the Elimination of Discrimination against Women (CEDAW) in its concluding observations of November 2017 expressed its concern that women and girls, including in refugee camps, remain at risk of trafficking for purposes of sexual exploitation or forced domestic labour and at the low level of prosecutions of traffickers, particularly under the Counter-Trafficking in Persons Act of 2010 (CEDAW/C/KEN/CO/8, paragraph 26). ***The Committee therefore urges the Government to take the necessary measures to ensure the effective implementation and enforcement of the provisions of the Counter Trafficking in Persons Act by conducting thorough investigations and prosecutions against persons who engage in the trafficking of children and ensuring that sufficiently effective and dissuasive sanctions are imposed. It requests the Government to provide information on the measures taken in this regard and on the number of investigations, prosecutions, convictions and penalties imposed for the offences related to the trafficking of children under 18 years of age.***

*Articles 3(d), 4(1) and 7(2)(a) and (b). Hazardous work and effective and time-bound measures to prevent the engagement of children in, and to remove them from the worst forms of child labour and to provide for their rehabilitation and social integration. Child domestic work.* In its previous comments, the Committee noted

that section 12(3), read in conjunction with section 24(e) of the Employment (General) Rules of 2014, prohibits the employment of children under the age of 18 years in various types of hazardous work listed under fourth schedule of the Rules, including domestic work. The Committee also noted that ILO–IPEC, through the Global Action Programme (GAP 11) has supported several activities, including the carrying out of a situational analysis for child domestic workers in Kenya. According to the GAP report of 2014, the situation analysis revealed that, children over 16 years of age, some of whom started working at 12–13 years, are involved in domestic work in Kenya. Many are underpaid and work for long hours averaging 15 hours per day and are subject to physical and sexual abuse. It further noted that according to the report entitled Road Map to Protecting Child Domestic Workers in Kenya: Strengthening the Institutional and Legislative Response, April 2014, there were estimated 350,000 child domestic workers in Kenya, the majority of whom are girls between 16 and 18 years of age. The Committee requested the Government to take the necessary measures to prevent child domestic workers from engaging in hazardous work and to take effective and time bound measures to remove them from such work and to provide for their rehabilitation and social integration.

The Committee notes that the Government has not provided any information on the measures taken to remove children from hazardous domestic work nor on measures for their rehabilitation and social integration. However, it notes the Government's indication in its report that 17 per cent of children aged between 5-17 years are involved in child labour with the agricultural and domestic sectors being the main areas where child labour is more prevalent. About 82 per cent of the domestic workers are girls from rural areas working in urban centers. The Committee notes with ***concern*** the large number of children under the age of 18 years who are involved in domestic work and are subject to hazardous working conditions. ***The Committee therefore once again urges the Government to take the necessary measures to ensure that its new regulation on hazardous work is effectively applied so as to prevent domestic workers under 18 years of age from engaging in hazardous work. It also requests the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children engaged in domestic work from hazardous working conditions and ensure their rehabilitation and social integration. The Committee finally requests the Government to provide information on the measures taken in this regard and on the results achieved, in terms of the number of child domestic workers removed from such situation and rehabilitated.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk.* 1. *Street children.* In its previous comments, the Committee noted the Government's information that the Government, in partnership with ILO–IPEC was working to support the removal of children from street work and to enrol them in skills training programmes and entrepreneurship training. The Committee requested the Government to continue to provide information on the measures taken by the Government to protect street children from the worst forms of child labour and to provide for their rehabilitation and social integration.

The Committee notes the Government's information that it has been implementing the Street Family Rehabilitation Trust Fund and that it is in the process of developing a National Policy on Rehabilitation of Street Families. The Committee also notes that according to the UNICEF Situation Analysis of Children and Women (SITAN report) in Kenya, 2017 under the Street Family Rehabilitation Trust Fund, more than 80,200 street children and youth have been enrolled in primary and secondary schools, while 18,000 street children have been re-integrated with their families. However, SITAN report indicates that there are an estimated 50,000 to 250,000 children who are living and/or working on the streets in Kenya. While noting the measures taken by the Government the Committee must express its ***concern*** at the significant number of children working on the streets. ***The Committee therefore urges the Government to intensify its efforts to protect street children from the worst forms of child labour, and to ensure the rehabilitation and social integration of children actually removed from the streets. It also requests the Government to provide information on the measures taken in this regard and the results achieved in terms of the number of street children removed from such situations and socially reintegrated.***

2. *Orphans of HIV/AIDS and other vulnerable children (OVCs).* The Committee previously noted, that according to the ILO–IPEC TACKLE project report entitled "Combating child labour in Siaya District, Kenya through sustainable home grown school feeding programme", the Government of Kenya estimated that 1.78 million children are orphans in Kenya, half of them being due to HIV/AIDS related deaths, with 40 per cent of them living with their grandparents. The Committee requested the Government to strengthen its efforts to protect child victims and orphans of HIV/AIDS from the worst forms of child labour, in particular by increasing their access to education.

The Committee notes that the Government has not provided any information in this regard. It notes from the SITAN report that currently 353,000 households are benefitting from the Cash Transfer Programme for OVCs. Moreover, the Presidential Bursary Scheme for OVCs is being provided to 50 children per constituency. The SITAN report further indicates that there are 854 registered Charitable Children's Institutions in Kenya providing care and protection to around 43,000 children. The Committee, however, notes from the SITAN report that approximately 3.6 million Kenyan children are orphans or

otherwise classified as vulnerable. Of these, 646,887 children have lost both parents, while 2.6 million have lost one parent (one million of these due to AIDS). Other children are made vulnerable due to poverty, harmful cultural practices, abandonment, natural disasters, ethnic and political conflict and/or poor care arrangements. ***Recalling that orphans and OVCs are at a greater risk of being involved in the worst forms of child labour, the Committee urges the Government to intensify its efforts to ensure that such children are protected from the worst forms of child labour and to facilitate their access to education. It requests the Government to provide information on the effective and time bound measures taken and the results achieved in this regard.***

*Clause (e). Take account of the special situation of girls. Commercial sexual exploitation of girls.* In its previous comments, the Committee noted that children were exploited in prostitution throughout Kenya, including in the coastal sex tourism industry, in the eastern khat cultivation areas, and near Nyanza's gold mines. Brothel-based child prostitution was reportedly increasing in Migori, Homa Bay, and Kisii counties, particularly around markets along the border with the United Republic of Tanzania. The Committee requested the Government to take effective and time bound measures to protect girls from becoming victims of commercial sexual exploitation and to provide information on such measures.

The Committee notes an absence of information in the Government's report on this point. The Committee, however, notes from the SITAN report that the sexual exploitation of children in travel and tourism is reportedly common in major tourist destinations such as Nairobi, Mombasa, Kisumu, Kakamega, Nakuru as well as in other major towns in Kenya. It also notes from the IOM Assessment Report that an estimated 10,000 to 15,000 girls between 12 and 18 years living in Diani, Kilifi, Malindi and Mombasa are involved in sex work. This report also indicates that child sex workers including beach boys, bar staff, waiters and others are often compelled to deliver sexual services and that during the low tourist season, the local market for child sex workers keeps the system going. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations of 2016, expressed concern about the high level of child prostitution and child pornography, particularly in the tourism and travel sector (CRC/C/KEN/CO/3-5, paragraph 37). The Committee notes with ***deep concern*** the significant number of children who are engaged in this worst forms of child labour in Kenya. ***The Committee therefore urges the Government to take effective and time-bound measures to protect girls from becoming victims of commercial sexual exploitation, particularly in the coastal regions of Kenya. It requests the Government to provide information on the measures taken in this regard and the results achieved in terms of the number of children who are, in practice, removed from commercial sexual exploitation and rehabilitated.***

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

## Kiribati

### Minimum Age Convention, 1973 (No. 138) (ratification: 2009)

*Article 1 of the Convention. National policy for the effective abolition of child labour and application of the Convention in practice.* In its previous comments, the Committee noted that a statistical database on the employment of children and young persons, based on Employment Return Forms, was being set up, and that a child labour survey and report, carried out with the ILO-IPEC, were being finalized. The Committee requested the Government to pursue its efforts to both develop a national child labour policy and ensure that sufficient data on the situation of working children in Kiribati was made available.

The Government indicates in its report that it takes note of the Committee's previous comments regarding the development of a child labour policy and that it will further discuss it with the Decent Work Advisory Board and related technical offices. The Government will provide updated information in its next report.

The Government also indicates that the statistical database on the employment of children and young persons, based on Employment Return Forms, has not been set up due to high turnover within the Ministry, particularly in the Work Relations Unit that deals specifically with the implementation and monitoring of the Employment and Industrial Relations Code, 2015 (EIRC).

The Government indicates that the rapid assessment conducted in Tarawa in 2012 with the ILO-IPEC through its TACKLE programme in Fiji confirms that there are children under the age of 14 working in the informal economy. It specifies that measures or procedures that could accurately describe the situation of children engaged in child labour in Kiribati are still being developed. The Committee notes that the rapid assessment, annexed to the Government's report, states that there is a clear indication that some children of 12 years of age and below are involved in child labour.

The Committee also notes that according to the Kiribati Social Development Indicator Survey (KSDIS) carried out in 2018–19 by the Kiribati National Statistics Office in collaboration with the Ministry of Health and other government ministries, 28.3 per cent of children aged 5 to 14 years were engaged in child labour. ***Given the high percentage of children under 14 years of age engaged in child labour, the Committee requests the Government to take the necessary measures to develop and adopt a national***

***policy to ensure the progressive elimination of child labour, including in the informal economy. Furthermore, it encourages the Government to pursue its efforts to develop a statistical database including information on the number of children below the minimum age engaged in child labour, and requests the Government to continue to provide information on the number of children engaged in child labour in the country.***

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

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2009)

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution*. The Committee previously noted that section 118(f) of the Employment and Industrial Relations Code, 2015 (EIRC), prohibited the use, procuring or offering of a child for prostitution, and established a penalty of a fine of $5,000 or a term of imprisonment of ten years, or both, for any person contravening this provision. The Committee accordingly requested the Government to provide information on the application in practice of section 118(f) of the EIRC once it has entered into force.

The Government indicates in its report that no cases or convictions relating to section 118(f) of the EIRC have been reported. The Committee notes that the rapid assessment conducted in Tarawa in 2012 with the ILO–IPEC through its TACKLE programme in Fiji, annexed to the Government's report, identified 33 children engaged in prostitution, all of them girls between 10 and 17 years of age. This study indicated that 85 per cent of these girls first engaged in prostitution between 10 and 15 years of age and that the most common place for prostitution was on foreign boats (pages 8–9 and 18–37).

The Committee further notes that the Government stated, in its report to the Committee on the Rights of the Child of March 2020, that children are victims of commercial sexual exploitation, although cases tend to go unreported because girls are considered not to be forced and the community at large does not have a clear understanding that this is illegal and dangerous (CRC/C/KIR/2-4, paragraph 193).

The Committee also notes that the Committee on the Elimination of Discrimination against Women as well as the UN Country Team Fiji (which covers Kiribati) highlighted, in their reports of 2020, the existence of commercial sexual exploitation of children, in particular on foreign fishing vessels (CEDAW/C/KIR/CO/1-3, paragraph 31 and Joint Submission of the UN Country Team Fiji for the Universal Periodic Review, paragraph 40). ***The Committee requests the Government to take the necessary measures to ensure that persons contravening section 118(f) of the EIRC are investigated and prosecuted. It requests the Government to supply information on the number of violations identified under section 118(f) of the EIRC, the persons prosecuted and convicted, and the penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these worst forms of child labour and ensuring their rehabilitation and social integration. Commercial sexual exploitation.* The Committee previously noted that the Kiribati Community Police patrol carried out rounds during the night to keep children off the streets in order to prevent and remove child victims of commercial sexual exploitation. The Government stated that the Ministry of Women, Youth, Sports and Social Affairs (MWYSSA) and the Ministry of Health and Medical Services had established new divisions responsible for providing counselling and guidance in resolving problems, including for cases of worst forms of child labour. The Committee requested the Government to strengthen its efforts to prevent the commercial sexual exploitation of children in the country and to provide information on the measures taken to remove children from this worst form of child labour.

The Government indicates that the MWYSSA conducted awareness-raising activities among owners and members of kava bars who employ underage girls to work at night and that the number of girls working in these premises has consequently decreased. The MWYSSA also provides advice and counselling to these children and empowers them to integrate into the community, including through education and awareness-raising on the risks of alcohol. ***The Committee requests the Government to continue to take measures to prevent the engagement of children in commercial sexual exploitation. It also requests the Government to take the necessary steps to remove children from this worst form of child labour as well as to rehabilitate and socially integrate them. It requests the Government to provide information in this regard, as well as on the number of children under 18 years of age who have actually been removed from commercial sexual exploitation and provided with appropriate care and assistance.***

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

## Kyrgyzstan

### Minimum Age Convention, 1973 (No. 138) (ratification: 1992)

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that 672,000 of the 1,467,000 children aged 5–17 years in Kyrgyzstan were economically active. The Committee further noted a number of actions and initiatives undertaken

under the ILO–IPEC project entitled "Combating Child Labour in Central Asia – Commitment becomes Action" (PROACT CAR Phase III), which aimed at the prevention and elimination of child labour in Kazakhstan, Kyrgyzstan and Tajikistan.

The Committee notes the Government's indication in its report that according to the 2014-2015 national child labour survey (CLS), the number of children engaged in child labour decreased from 32.9 per cent in 2007 to 27.8 per cent (414,246 children) in 2014. The Government further highlights that the United Nations Development Assistance Framework (UNDAF) for Kyrgyzstan for the period 2018-2022 sets out a target of reduction in child labour from 27.8 per cent to 22 per cent in 2022. The Committee notes the Government's information on the adoption of the State Programme to Support Families and Protect Children for 2018–2028, which is the Government's central policy document on the protection of children, including working children. The Committee further notes the adoption of the Regulations on the Procedure for Identifying Children and Families Living in Difficult Circumstances in 2015. Section 7 of the Regulations provides for measures on the detection and protection of children involved in child labour, including workplace inspections and assessment of working conditions of children. The Government indicates the establishment of a Coordination Council for Social Protection and Children's Rights in 2015, which also examines issues relating to the prevention and elimination of child labour. The Committee notes the Government's statement that under the ILO's International Programme on the Elimination of Child Labour (ILO-IPEC), in the period 2013–19, more than 2,000 children and families received direct services assistance (including medical and legal services, food, school supplies, education and professional training) which prevented or removed over 1,000 children from being engaged in child labour. The Committee takes due note of a number of awareness-raising and educational activities undertaken by the Government with the support of ILO–IPEC to ensure prevention and protection against child labour. ***While noting the measures taken by the Government, the Committee requests it to pursue its efforts to ensure the reduction of the number of children working under the minimum age (16 years). The Committee also requests the Government to provide information on the results achieved in terms of progressively eliminating child labour, in particular, within the framework of the State Programme to Support Families and Protect Children for 2018–2028.***

*Article 2(1). Scope of application and labour inspection.* The Committee previously noted that the Labour Code, by virtue of its section 18, applies to the parties involved in contractual labour relations, that is the worker and the employer. The Committee noted, however, that the overwhelming majority of child labourers (96 per cent) worked in agriculture or home production, and in terms of work status, the overwhelming majority (95 per cent) were unpaid family workers. The Committee requested the Government to ensure the protection of self-employed children, children in the informal economy and children working on family farms, including by strengthening the labour inspection.

The Committee notes the Government's indication that the authorities of the Procurator-General's Office that are responsible for the implementation of labour legislation have identified during inspection visits the cases of the unlawful engagement of minors in work, including work that is harmful for their health and morals (for example, sale of alcoholic drinks, loading and unloading heavy goods, work at night-time or during school hours). The Government also indicates the positive results of the Child Labour Monitoring System (CLMS) introduced with support from the ILO-IPEC Project for Action against Child Labour in Central Asian Countries (PROACT-CAR) in three pilot districts with respect to identification and providing social support to children engaged in child labour, including those working on family farms and in the informal economy. However, the Committee notes from the Government's report to the Committee on the Rights of the Child of November 2019, that according to the Law on the Procedure for Conducting Inspections of Entrepreneurship Entities of 25 May, 2007 No. 72, labour inspectors are not entitled to carry out unannounced inspections for an employer who intends to violate the rights of working children, since an employer shall be warned in writing about the inspection at least 10 days in advance. The Committee further notes the Government's indication that the Government Decision No. 586 of 17 December 2018 has introduced a temporary prohibition (moratorium) on business inspections and that the issue on strengthening the labour inspection will be examined in 2021 within the framework of a National Tripartite Commission. The Committee further notes from the 2014-2015 CLS that 96.2 per cent of working children tend to be concentrated in agriculture, while a vast majority of children work as unpaid family workers (92.7 per cent). ***The Committee requests the Government to continue its efforts to ensure the protection of children in the informal economy and children working on family farms. Referring to its comments made under the Labour Inspection Convention, 1947 (No. 81), the Committee urges the Government to strengthen the functioning of the labour inspectorate in order to enable it to effectively enforce specific legislative provisions giving effect to the Convention and to provide information in this regard. It also requests the Government to provide information on the establishment of CLMS in additional districts in the country.***

*Article 7. Light work.* The Committee previously noted that according to section 18 of the Labour Code, pupils who have reached the age of 14 years may conclude an employment contract with the written consent of their parents, guardians or trustees to perform light work outside school hours, provided that

it does not harm their health and does not interfere with their education. The Committee noted that according to sections 91 and 95 of the Labour Code, the working hours for workers aged 14–16 years shall not exceed 24 hours per week, and daily working hours shall not exceed five hours. The Committee further noted that, among non-working children aged 7–17 years, the school attendance rate was estimated to be 97.4 per cent, compared to 94.5 per cent among working children aged 7–17 years, with the difference mainly resulting from the lower school attendance of older working children.

The Committee notes from the 2014-2015 CLS that in 2014, among working children aged 7–17 years, the estimated school attendance rate was 90.4 per cent. The 2014-2015 CLS further indicates that 24.8 per cent of schoolchildren aged 6 years (9,795 children) are working children, whereas 39.5 per cent of schoolchildren aged 7-13 years (318,590 children) are in employment. In addition, according to the 2014-2015 CLS, the average working hours for children aged 14–16 years is 33.6-hour per week, which is beyond the 24-hour limit set out by section 91 of the Labour Code. The Committee notes the Government's indication that the list of the activities in which light work by children aged 14–16 years may be permitted has not been determined and that this issue will be considered by a tripartite working group on the improvement of legislation which was established by a Directive of the Ministry of Labour and Social Development in May 2019. ***The Committee urges the Government to take the necessary measures to ensure that children under 14 years of age are not engaged in work or employment. The Committee requests the Government to ensure that the working hours of children aged 14–16 years do not exceed the limits established by section 91 of the Labour Code. The Committee further requests the Government to take the necessary measures to determine light work activities permitted for children aged 14–16 and to provide information on developments in this regard.***

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2004)

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted the information from ILO–IPEC that the Ministry of Foreign Affairs was developing a National Action Plan Against Human Trafficking for 2012–15. The Committee further noted the information from the report of the UN Special Rapporteur on violence against women, its causes and consequences, that trafficking of women and children for sexual exploitation and forced labour continued to be a problem in the country (A/HRC/14/22/Add.2, paragraph 33). The Committee expressed its concern at the lack of data on the prevalence of child trafficking in Kyrgyzstan, as well as reports of the prevalence of this phenomenon in the country.

The Committee notes the Government's indication in its report regarding the adoption of the Government Programme and the Action Plan to Combat Trafficking in Persons for 2017–2020 (the Action Plan for 2017–2020) aimed at improving the regulatory and legal framework, strengthening interdepartmental and international cooperation, and prevention and protection of victims of trafficking in persons. The Government further indicates that to implement the Action Plan for 2017–2020, the Office of the Ombudsman has established a working group of representatives of relevant ministries and departments to monitor the rights of children subjected to sale and exploitation. In particular, the Government specifies that based on the results of the monitoring undertaken in July-September 2019 with support from the ILO Programme to Assist Kyrgyzstan in Ratifying and Applying International Labour Standards and Fulfilling Reporting Obligations, it is planned to develop recommendations on preventing and combating trafficking of children. The Committee further notes that the criteria for identifying child victims of trafficking and the instructions on social rehabilitation of child victims of trafficking were adopted by the Government Decree No. 493 of 19 September, 2019 with the support of the International Organization for Migration (IOM) and the ILO. The Committee notes the statistical data provided by the Government that under section 124 of the Criminal Code of 1997 (prohibition of trafficking in persons), the courts examined 15 cases which resulted in 12 convictions in 2014–2017. The Committee further notes that the new Criminal Code entered into force on 1 January 2019. Section 171(1) of the Criminal Code of 2019 prohibits trafficking in persons whereas subparagraph 2, paragraph 2 of section 171 and subparagraph 3, paragraph 3 of section 171 specify that trafficking of children is an aggravated offence. ***The Committee requests the Government to continue to take measures, particularly within the framework of the Action Plan for 2017–2020 to prevent and combat trafficking of children and to provide information on the results achieved. The Committee further requests the Government to supply statistical data on the application of section 171 of the Criminal Code in practice in cases of trafficking of children for the purpose of labour or sexual exploitation, including the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

*Clause (b). Use, procuring or offering of children for prostitution.* In its previous comments, the Committee noted that sections 260 and 261 of the Criminal Code of 1997 make enticement into prostitution an offence. The Committee, however, noted that the Committee on the Rights of the Child (CRC), in its concluding observations, expressed concern that in a number of cases of child prostitution, investigations and prosecutions had not been initiated, and that child victims might be held responsible,

tried and placed in detention (CRC/C/OPSC/KGZ/CO/1, paragraphs 17 and 21). The Committee also noted the information in the Report of the UN Special Rapporteur on violence against women, its causes and consequences, that adolescent girls in the country are particularly vulnerable to commercial sexual exploitation in urban areas, with the majority of the girls involved coming from rural areas (A/HRC/14/22/Add.2, paragraph 35).

The Committee observes from the 2018 Analytical report on study of judicial practice regarding offences involving trafficking in persons in Kyrgyzstan carried out by the United Nations Office on Drugs and Crime (UNODC), that in 2015–17, the courts examined six cases under section 260 (3) of the Criminal Code of 1997 (prohibition of enticement of a minor into prostitution) which involved six victims aged 14–18 years. Concerning section 261(3) of the Criminal Code of 1997 (prohibition of organization or maintenance of dens for prostitution with the involvement of a minor), the courts examined three cases in 2014–17. The Committee notes the Government's information that the new Criminal Code of 2019 includes section 166(2)(1) which prohibits the involvement of a minor into prostitution. The Committee further notes that section 167(2) of the Criminal Code of 2019 sets out a category VI fine or category II imprisonment for the organization or maintenance of dens for prostitution or procuring for debauchery or pimping with the involvement of persons who knowingly have not reached the age of 16 years. ***Recalling that all persons under the age of 18 are covered by the scope of the Convention, the Committee urges the Government to ensure that section 167(2) of the Criminal Code of 2019 covers children between the age of 16 and 18 years. Noting the absence of the legislative provisions specifically criminalizing clients who use children under 18 years of age for the purpose of prostitution, the Committee urges the Government to take the necessary measures to ensure compliance with the Convention on this point. It further requests the Government to provide information on the application of sections 166(2)(1), and 167(2) of the Criminal Code of 2019 in practice, including the number of investigations, prosecutions, convictions and types of sanctions applied as well as the number and age of minors used for prostitution.***

*Clause (d) and Article 4(3). Hazardous work and revision of the list of hazardous types of work. Children working in agriculture.* The Committee previously noted that the use of hazardous child labour in the agricultural sector was widespread, particularly in tobacco, rice and cotton fields, and that in rural areas, regulations prohibiting children from engaging in such work were not strictly enforced. The Committee noted the Government's statement that work in the fields was one of the forms of child labour targeted by the Programme of Action by the Social Partners for the Elimination of the Worst Forms of Child Labour. The Committee also noted the continued implementation of a project aimed at eradicating hazardous child labour in the tobacco industry, developed by a non-governmental organization and carried out by trade union workers in the agro-industrial sector. In addition, the Committee noted the information from ILO–IPEC that, through the project entitled "Combating Child Labour in Central Asia – Commitment becomes Action (PROACT CAR Phase III)", action had been taken to address hazardous child labour in agriculture.

The Committee notes the Government's indication that the draft list of hazardous work prohibited to children under the age of 18 years has been submitted to ministries, departments and social partners for agreement. The Government further indicates that the draft list includes significantly expanded types of dangerous and harmful working conditions in agriculture The Government also indicates a project "The Elimination of Child Labour in Tobacco" implemented by the NGO "Alliance for the Protection of Children's Rights", together with the Central Committee of the Trade Union of Workers in the Agro-Industrial Complex, with support from the Elimination of Child Labour in Tobacco Foundation, and the Ministry of Labour and Social Development. The Committee notes that according to the 2014-2015 national child labour survey (CLS), a majority of working children tend to be concentrated in agriculture (96.2 per cent). The Committee further notes that according to a Multi Indicator Cluster Survey conducted by the National Statistics Committee with support from the UNICEF, the number of children involved in hazardous work had fallen from 15.2 per cent in 2014 to 11.7 per cent in 2018. ***The Committee requests the Government to continue to take the necessary measures ensuring that persons under 18 years of age are protected against hazardous work, particularly in the cotton, tobacco and rice-growing sectors, and to provide information on the results achieved. The Committee also requests the Government to ensure that the list of types of hazardous work prohibited to children under 18 years of age is adopted in the near future.***

*Article 7(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. Trafficking in children.* The Committee previously noted a disparity between the number of trafficking victims identified and the number of victims receiving assistance. The Committee noted the information from the IOM that it was implementing a project entitled "Combating Trafficking in Persons in Central Asia: Prevention, Protection and Capacity Building" in the country from 2009–12, which includes awareness raising and assistance for victims. The Committee also noted the implementation in Kyrgyzstan of the Joint Programme to Combat Human Trafficking in Central Asia of the ILO, the United Nations Development Programme and the UNODC under the UN Global Initiative to Fight Human Trafficking, which includes

support for the development of national referral mechanisms established between law enforcement agencies and civil society organizations.

The Government refers in its reply to the IOM data indicating that in 2002–18, the IOM identified and provided assistance to approximately 2,500 victims of trafficking in persons, including children. The Government further indicates that within the framework of ILO-IPEC support, in 2013–19, more than 2000 children and families received direct assistance services, including medical and legal services, food, school supplies, and vocational trainings. The Government further refers to the adoption of the Regulations on the Procedure for Identifying Children and Families Living in Difficult Circumstances in 2015 which include social support measures for children engaged in the worst forms of child labour (section 7). The Committee notes that the instructions on the social rehabilitation of child victims of trafficking of 2019 provide for psychological, medical, legal and rehabilitation assistance. The Committee further observes that the Government Decree of March 5, 2019 No. 101 has adopted regulations on the organization of shelters for victims of trafficking in persons for the provision of medical, psychiatric, social, and legal assistance as well as support in establishing contacts with relatives or legal representatives. ***The Committee requests the Government to pursue its efforts to provide the necessary direct assistance to child victims of trafficking, and to ensure their rehabilitation and social integration. It further requests the Government to provide information on the results achieved in this regard, including on the establishment and operation of specialized shelters for victims of trafficking in persons and the number of persons under the age of 18 who have benefited from rehabilitation and social integration assistance.***

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

## Lebanon

### Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 2(1) of the Convention. Scope of application*. In its earlier comments, the Committee noted that the Labour Code only applies to work performed under an employment relationship (by virtue of sections 1, 3 and 8 of the Code). The Committee recalled that the Convention applies to all branches of economic activity and covers all types of employment or work, whether they are carried out on the basis of an employment relationship or not, and whether they are remunerated or not. The Committee also noted that under Chapter 2, section 15, of the draft amendments to the Labour Code, it seemed that the employment or work of young persons would also include non-traditional forms of employment relationship. The Committee therefore requested that the Government provide information on the progress made in relation to the adoption of the provisions of the draft amendments to the Labour Code.

The Committee notes an absence of information in the Government's report on this point. ***Considering that the Government has been referring to the draft amendments to the Labour Code for a number of years, the Committee once again expresses the firm hope that the Government will take the necessary steps to ensure that the amendments to the Labour Code relating to self-employed children and children in the informal economy are adopted in the very near future. The Committee requests that the Government provide a copy of the new provisions, once adopted.***

*Article 2(2). Raising the minimum age for admission to employment or work*. In its earlier comments, the Committee noted that, at the time of ratifying the Convention, Lebanon declared 14 years as the minimum age for admission to employment or work and that Act No. 536 of 24 July 1996, amending sections 21, 22 and 23 of the Labour Code, prohibits the employment of young persons before the age of 14. The Committee also noted the Government's intention to raise the minimum age for admission to employment or work to 15 years of age and that the draft amendments to the Labour Code would include a provision in this regard (section 19). The Committee requested that the Government provide information on the progress made in the adoption of the provisions of the draft amendments to the Labour Code on the minimum age for employment or work.

The Committee notes the Government's indication in its report that the Committee's comments have been taken into account in the draft amendments to the Labour Code. The draft has also been submitted to the Council of Ministers for its examination. ***The Committee once again requests that the Government provide information on any progress made in the adoption of the provisions of the draft amendments to the Labour Code regarding the minimum age for employment or work.***

*Article 2(3). Compulsory education.* In its earlier comments, the Committee noted that the age limit for compulsory education is 12 years of age (Act No. 686/1998 relating to free and compulsory education at the primary school level). The Committee also noted the Government's indication that a draft law aimed at raising the minimum age of compulsory education to 15 years had been sent to the Council of Ministers for examination. The Committee requested that the Government indicate the progress made in this regard.

The Committee notes the Government's indication that the Ministry of Labour took into account the Committee's comments which were inserted in the draft amendments to the Labour Code. Moreover, the Committee notes that in its 2016 concluding observations, the UN Committee on Economic, Social and Cultural Rights is concerned at the number of children, especially refugee children, who are not in school or have quit school owing to the insufficient capacity of the educational infrastructure, the lack of documentation, and the pressure to work to support their families, among other reasons (E/C.12/LBN/CO/2, paragraph 62).

In this regard, the Committee recalls the necessity of linking the age of admission to employment to the age limit for compulsory education. If the two ages do not coincide, various problems may arise. If the minimum age for admission to work or employment is lower than the school leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work (see 2012 General

Survey on the fundamental Conventions, paragraph 370). Noting the Government's intention to raise the age of completion of compulsory schooling to 15 years, the Committee once again reminds the Government that pursuant to *Article 2(3)* of the Convention, the minimum age for admission to employment (currently 14 years) should not be lower than the age of completion of compulsory schooling. ***Therefore, the Committee urges once again the Government to intensify its efforts to raise the minimum age for admission to employment or work to 15 years, and to provide for compulsory education up until that age, within the framework of the adoption of the draft amendments to the Labour Code. The Committee requests that the Government provide a copy of the new provisions, once adopted.***

*Article 6. Vocational training and apprenticeship.* In its earlier comments, the Committee noted that the Government had stated that the draft amendments to the Labour Code (section 16) had set the minimum age for vocational training under a contract at 14 years. The Committee expressed the firm hope that such a provision under the draft amendments would be adopted in the near future.

The Committee notes the Government's indication that section 16 will be adopted along with the draft amendments to the Labour Code. The Government also indicates that the National Centre for Vocational Training is in charge of carrying out vocational training and apprenticeships. ***The Committee once again expresses the firm hope that section 16 of the draft amendments to the Labour Code, setting a minimum age of 14 years for entry into an apprenticeship, in conformity with Article 6 of the Convention, will be adopted in the very near future.***

*Article 7. Light work.* In its earlier comments, the Committee noted that under section 19 of the draft amendments to the Labour Code, employment or work of young persons in light work may be authorized when they complete 13 years of age under certain conditions (except in different types of industrial work in which the employment or work of young persons under the age of 15 years is not authorized). The Committee also noted that light work activities would be determined by virtue of an Order from the Ministry of Labour. The Committee requested that the Government provide information on any progress made in this regard.

The Committee notes the Government's indication that it has asked for light work to be included in the ongoing ILO–IPEC Project "Country level engagement and assistance to reduce child labour in Lebanon" (CLEAR Project) and that a few meetings have been held in this regard. The Government indicates that, once the CLEAR Project is launched, it will be able to prepare a statute on light work in accordance with the relevant international standards. ***The Committee once again requests that the Government take the necessary measures to ensure the formulation and adoption of a statute determining light work activities, including the number of hours during which, and the conditions in which, light work may be undertaken. It requests that the Government provide information on the progress achieved.***

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

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 3, 7(1) and (2)(b) of the Convention. Worst forms of child labour, penalties and direct assistance for rehabilitation and social integration. Clause (a). All forms of slavery or practices similar to slavery. Trafficking.* In its previous comments, the Committee noted the adoption of the Anti-Trafficking Act No. 164 (2011). The Committee requested the Government to provide information on the application of this Act, in practice.

The Committee notes the statistical information related to trafficking of children provided by the Government in its report. It notes that in 2014, five child victims of trafficking for labour exploitation (street begging), and one child victim of trafficking for sexual exploitation, were identified. According to the Government's indication, all the child victims identified were referred to social and rehabilitation centres, such as the *"Beit al Aman"* shelter in collaboration with Caritas. The Government also indicates that in 2014 the Higher Council for Childhood drafted a sectorial Action Plan on Trafficking of Children that is still under consultations with the relevant stakeholders.

The Committee also notes that in its 2015 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) recommended the Government to provide mandatory gender-sensitive capacity-building for judges, prosecutors, the border police, the immigration authorities and other law enforcement officials to ensure the strict enforcement of Act No. 164 to combat trafficking by promptly prosecuting all cases of trafficking in women and girls (CEDAW/C/LBN/CO/4-5, paragraph 30(a)). ***The Committee requests the Government to take the necessary measures to ensure that the draft sectorial Action Plan on Trafficking of Children is adopted in the near future, and to provide information on any progress made in this regard. The Committee also requests the Government to continue to provide information on the application in practice of Act No. 164 of 2011, including statistical information on the number of investigations, prosecutions, convictions and penal sanctions applied for the offence of trafficking of children. Lastly, the Committee requests the Government to provide information on any measures adopted in order to prevent trafficking of children as well as measures taken to ensure that child victims of trafficking are provided with appropriate rehabilitation and reintegration services.***

*Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities, in particular for the production and trafficking of drugs.* In its previous comments, the Committee noted that under section 33(b) and (c) of the draft amendments to the Labour Code, the use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities is punishable under the Penal Code, in addition to the penalties imposed by the Labour Code. It also noted that section 3 of Annex No. 1 of Decree No. 8987 of 2012 on hazardous work prohibits such illicit activities for minors under the age of 18. The Committee noted the statistical information (disaggregated by gender and age) provided by the Government on the number of children found engaged in prostitution from 2010 to 2012.

The Committee notes the Government's indication that the labour inspectorate is the body responsible for the supervision of the implementation of Decree No. 8987. The Committee notes with ***concern*** that according to the Government's indication no cases related to the application of the Decree have been detected so far. ***The Committee urges the Government to take immediate and effective measures to ensure the application in practice of the provisions of Decree No. 8987 of 2012 prohibiting the engagement of children for prostitution or pornographic purposes or for illicit activities. The Committee requests the Government to provide statistical information on any prosecutions and convictions made with regard to the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.***

***As for the draft amendments to the Labour Code, the Committee once again requests the Government to take the necessary measures without delay to ensure the adoption of the provisions prohibiting the use, procuring or offering of persons under the age of 18 for the production of pornography or for pornographic performances, and the use, procuring or offering of persons under the age of 18 for illicit activities, as well as of the provisions providing for the penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk.* 1. *Refugee children.* In its previous comments, the Committee requested the Government to provide information on the measures taken within the work programme of the National plan of action on the elimination of child labour (NAP–WFCL) for working Palestinian children to protect them from the worst forms of child labour.

The Committee notes the Government's indication that no new measures have been taken due to the political and security situation in the country. The Committee also notes that according to the 2016 United Nations High Commissioner Job Refugees (UNHCR) report entitled "Missing out: Refugee Education in Crisis", there are more than 380,000 refugee children between the ages of 5 and 17 registered in Lebanon. It is estimated that less than 50 per cent of primary school-age children have access to public primary schools and less than 4 per cent of young persons have access to public secondary schools. The report highlights that since 2013 the Government has introduced a two-shift system in public schools to encourage the enrolment of refugee children. About 150,000 children have entered this system. It also notes from the ILO report entitled "ILO response to the Syrian Refugee crisis in Jordan and Lebanon", of March 2014, that many refugee children are working in hazardous conditions in the agricultural and urban informal sector, street peddling or begging. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take effective and time-bound measures to protect refugee children (in particular Syrian and Palestinian) from the worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the number of refugee children who have benefited from any initiatives taken in this regard, to the extent possible disaggregated by age, gender and country of origin.***

2. *Children in street situations*. The Committee notes the Government's indication that the Ministry of Social Affairs has taken a series of measures to address the situation of street children, including: (i) undertaking activities to raise awareness through education, media and advertisement campaigns; (ii) training of a certain number of social protection actors/players working in child protection institutions; (iii) providing rehabilitation activities for a certain number of street children and their reintegration in their families; (iv) within the framework of the Poverty Reduction Strategy (2011–13) 36,575 families have been chosen to benefit from free basic social services, such as access to free compulsory public education as well as medical facilities. The Government also indicates that the 2010 draft "Strategy for Protection, Rehabilitation and Integration of Street Children" has not been implemented yet, but is in the process of being revised.

The Committee notes the 2015 study "Children Living and Working on the Streets in Lebanon: Profile and Magnitude" (ILO–UNICEF–Save the Children International) which provides detailed statistical information on the phenomenon of street-based children across 18 districts of Lebanon. The Committee also notes that the report comprises a certain number of recommendations, including: (i) enforcing relevant legislation; (ii) reintegrating street-based children into education and providing basic services; and (iii) intervening at the household-level to conduct prevention activities. The Committee further observes that despite street work being one of the most hazardous forms of child labour under Decree No. 8987 on hazardous forms of child labour (2012), it is still prevalent with a total of 1,510 children found to be living or working on the streets. Moreover, the Committee notes that in its 2016 concluding observations, the UN Committee on Economic, Social and Cultural Rights recommended that the Government raise resources so as to provide the necessary preventive and rehabilitative services to street children and enforce existing legislation aimed at combating child labour (E/C.12/LBN/CO/2, paragraph 45). ***Recalling that street children are particularly vulnerable to the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children, and to provide for their rehabilitation and social reintegration. The Committee also urges the Government to take the necessary measures to actively implement the 2010 draft strategy entitled "Strategy for Protection, Rehabilitation and Integration of Street Children", once revised and report on the results achieved. Finally, the Committee requests the Government to provide information on the number of street children who have been provided with educational opportunities and social integration services.***

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

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

## Lesotho

### Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee previously noted the adoption of the Action Plan for the Elimination of Child Labour (APEC) 2013–17/18 which aims to reduce the incidence of child labour and its worst forms to less than 1 per cent by 2016, while laying a strong policy and institutional foundation for eliminating all other forms of child

labour in the longer term. The Committee requested the Government to provide detailed information on the concrete measures taken within the framework of the APEC for eliminating child labour as well as the results achieved.

The Committee notes from the Progress report on the implementation of the APEC (Progress Report) attached along with the Government report, that the APEC was endorsed by all districts and coordinated efforts to eliminate child labour were undertaken. Further achievements of the APEC as indicated in the Progress Report include: (i) revising the Labour Code to strengthen the child labour provisions, to extend its scope and labour inspection services to cover the informal economy; (ii) developing child labour awareness brochures in English and Sesotho and making it available for the public; (iii) conducting awareness raising campaigns on laws and regulations relevant to child labour covering 80 per cent of the districts between 2016 and 2018; (iv) conducting six awareness raising campaigns on the guidelines for the elimination of child labour in the agricultural sector with special attention to herd boys in the districts of Botha-Bothe and Qacha's Nek; (v) establishing Community Child Protection Teams in at least 20 communities to monitor child labour at community level; and (vi) adopting programmes for bringing out-of-school children and school drop-outs to formal education. Moreover, within the programmes to support the needy and the vulnerable families 28,000 children were provided with scholarships for secondary education while 33,000 households benefited from the Child Grants Programme. The Committee further notes from the APEC progress report that the lack of resources, in terms of financial and human resources, in simplifying child labour laws for trainings and producing and transporting training materials are all challenges experienced by the Ministry in delivering its responsibility under the APEC. ***The Committee requests the Government to continue taking effective measures, including through extending the APEC or by developing and adopting other national action plans or programmes for eliminating child labour in the country. It requests the Government to provide information on any measures taken or envisaged in this regard.***

*Article 2(1). Scope of application and labour inspectorate. Self-employment and work in the informal economy.* In its previous comments, the Committee noted that the provisions of the Labour Code excluded self-employment from its scope of application. It noted that a Child Labour Unit was established to assist in the protection of children working in the informal economy. The Committee further noted from the report of the Office of the High Commissioner for Human Rights as well as from the List of Issues of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families that a high number of children continued to be engaged in animal herding, street trading and domestic work. The Committee requested the Government to provide information on the activities undertaken by the Child Labour Unit in protecting children working in the informal economy.

The Committee notes the Government's information that the Child Labour Unit conducted trainings and held public gatherings in the districts of Matsieng and Ha-Ramabanta to sensitize the people and government officials on child labour issues. Workshops focusing on sharing knowledge on child labour were also conducted in which representatives of people operating in the informal sector participated. The Committee also notes the Government's indication that the Labour Code Amendment Bill which contains provisions extending its scope as well as the labour inspection services to the informal economy is awaiting approval by the Parliament. The Committee notes however, from the Decent Work Country Programme III 2018–23 document that over 50 per cent of the labour force is employed in the informal sector. This document also indicates that regulating and preventing child labour is a major concern since the coverage of labour inspectorate does not include informal economy activities. In this regard the Committee notes that the Committee on the Rights of the Child, in its concluding observations of 25 June 2018, expressed concern that children are involved in herding and domestic work and that child labour negatively affects schooling of children in rural areas (CRC/C/LSO/CO/2, para. 55(a) and (c)). ***The Committee urges the Government to take the necessary measures to ensure that the protection afforded by the Convention is granted to self-employed children and children working in the informal economy, including children engaged in herding and domestic work. In this regard, referring to its comments made under the Labour Inspection Convention, 1947 (No.81), the Committee requests the Government to take the necessary measures to strengthen the capacities and expand the reach of the labour inspectorate so that it can adequately monitor and detect cases of child labour in these sectors. It further requests the Government to provide detailed information on the measures taken in this regard as well as the measures taken by the Child Labour Unit in addressing child labour in the informal economy. The Committee finally expresses the firm hope that the Labour Code Amendment Bill which contains provisions protecting children working in the informal economy and extending labour inspection services to the informal economy, will be adopted and enforced in the near future.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that, according to the Education Act of 2010, the age of completion of compulsory education is 13 years in Lesotho, two years before a child is legally eligible to work (15 years). It also noted the Government's indication that the Ministry of Education, in collaboration with the Ministry of Social Development, was working to make education free and compulsory at the secondary level. The Committee urged the

Government to take the necessary measures to ensure compulsory education up to the minimum age of employment of 15 years.

The Committee notes the Government's indication that no legal measures have been taken to extend compulsory education up to 15 years. However, a non-formal education policy for out-of-school children has been adopted under the APEC. The Committee reminds the Government that compulsory schooling is one of the most effective means of combating child labour, and underlines the need to link the age for admission to employment or work to the age of completion of compulsory schooling, as established in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). If compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (see 2012 General Survey on the fundamental Conventions, para. 371). ***The Committee therefore strongly urges the Government to take the necessary measures to ensure compulsory education up to the minimum age of employment or work of 15 years. It requests the Government to provide information on any progress made in this regard.***

*Application of the Convention in practice.* The Committee notes the Government's information that the results of the Labour Force Survey, which includes a child labour module, are yet to be released. The Committee also notes from the APEC Progress Report that the preliminary report of the 2016 Housing and Population Census shows that 35.9 per cent of children aged 10 years and above are engaged in child labour, of which 21 per cent are engaged in agricultural activities. It further notes the Government's information that according to the findings of the Lesotho Violence against Children survey conducted by the Ministry of Social Development in 2019, 11.4 per cent of children who are between the ages of 13–17 years are engaged in child labour. Moreover, according to the Rapid Assessment of 2019 on vulnerable populations, it was found that 19.1 per cent of children are engaged in construction projects, 14.9 per cent in farm work, 2.1 per cent in transport, 0.9 per cent in herding and 0.4 per cent in domestic work. While taking due note of the measures taken by the Government to combat child labour, notably within the framework of the APEC, the Committee observes that a high percentage of children below the minimum age are engaged in child labour in Lesotho. ***The Committee encourages the Government to pursue its efforts to ensure the progressive elimination of child labour. It requests the Government to continue providing information on the situation of working children in Lesotho, including the number of children below the minimum age engaged in child labour and the nature, scope and trends of their work. It also requests the Government to provide a copy of the results of the Labour Force Survey, once completed.***

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

*Articles 3(d) and 7(2)(b) of the Convention. Hazardous work and effective and time-bound measures to remove children from the worst forms of child labour and provide for their rehabilitation and social integration. Child domestic work.* The Committee previously noted that girls performing domestic work face verbal, physical and, in some cases, sexual, abuse from their employers, and that these children generally did not attend school. It also noted the Government's statement that it would consider promulgating regulations on domestic work to prohibit hazardous work in this sector to children under 18 years of age. The Committee further noted from the compilation report prepared by the Office of the High Commissioner for Human Rights for the Universal Periodic Review that children continued to work in domestic service. Moreover, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), had also expressed concern about the high number of children engaged in domestic work. The Committee urged the Government to take immediate and effective measures to ensure that child domestic workers were protected from hazardous work, including by developing and adopting regulations prohibiting hazardous domestic work by children under 18 years of age.

The Committee notes the absence of information on this point in the Government's report. However, it notes from the Progress Report on the implementation of the Action Programme on the Elimination of Child Labour (APEC) 2013–2018 that the draft Labour Code Bill has integrated provisions promoting the fundamental principles and rights of all workers, including domestic workers. Furthermore, the National Advisory Committee on Labour has made a proposal on having special regulations for domestic workers. The Committee notes that the Committee on the Rights of the Child (CRC), in its concluding observations of June 2018 expressed concern that children in domestic work are exposed to the worst forms of child labour (CRC/C/LSO/CO/2, paragraph 55(a)). ***The Committee therefore once again urges the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children engaged in domestic work from hazardous working conditions and ensure their rehabilitation and social integration. In this regard, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Labour Code Bill which guarantees protection to domestic workers, is adopted in the near future. It once again requests the Government to consider adopting special regulations which prohibit hazardous domestic work by children under 18 years of age. It requests the Government to provide information on any progress made in this regard.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identify and reach out to children at special risk.* 1. *Children engaged in animal herding.* In its previous comments, the Committee noted that children engaged in animal herding often worked under poor conditions for long hours and during the

night, without adequate food and clothing, were exposed to extreme weather conditions in isolated areas, and did not attend school. It also noted that between 10 and 14 per cent of boys of school-going age were involved in herding, about 18 per cent of whom were not employed by their own family. The Committee noted that the Government had adopted guidelines for the agricultural sector, with special attention to herd boys. According to the guidelines, children under 13 years of age should not herd livestock, except under the supervision of parents, employers or an adult, while children under 15 years were prohibited from herding in remote areas. The guidelines also require that herd boys should be provided with adequate clothing to suit the extreme weather conditions, adequate food and medical assistance as well as safe and proper accommodation. Moreover, their working time should not exceed more than 21 hours during school weeks and not more than 30 hours during school holidays, and night work is prohibited. It requested the Government to provide information on the implementation of the guidelines for the agricultural sector and the results achieved.

While noting an absence of information in the Government's report on this point, the Committee notes from the APEC Progress Report that the Ministry of Labour and Employment conducted six awareness-raising campaigns on the guidelines in the districts of Botha-Bothe and Qacha's Nek. The Committee notes that according to the UNICEF Multiple Indicator Cluster Survey results of 2018, nearly one in three children aged 5–17 years were engaged in child labour, of which two thirds of children are involved in herding animals. The Committee notes in the concluding observations of the CRC of June 2018 that children involved in herding are still exposed to the worst forms of child labour (CRC/C/LSO/CO/2, paragraph 55(a)). ***The Committee therefore once again urges the Government to take effective and time-bound measures to ensure that children who are engaged in hazardous work in animal herding are removed from this worst form of child labour and are rehabilitated and socially integrated. In this regard, it requests the Government to continue providing information on the implementation of the guidelines for the agricultural sector and the results achieved.***

2. *Orphans of HIV/AIDS and other vulnerable children (OVCs).* The Committee previously noted the various support and assistance measures taken by the Government for OVCs, including school bursaries, feeding scheme programmes, the Child Grants Programme (CGP), the Conditional Cash Transfer Programme and the National Strategic Plan on Vulnerable Children 2012–17, as well as the results achieved. Further, noting from the 2014 estimates from UNAIDS that about 74,000 children aged 0–17 are orphans due to HIV/AIDS in Lesotho, the Committee urged the Government to strengthen its efforts to ensure the protection of children orphaned by HIV/AIDS and other vulnerable children from the worst forms of child labour.

The Committee notes the Government's information that the Ministry of Social Development (MOSD) with the help of UNICEF and the European Union Lesotho have assisted in collecting data for the National Information System for Social Assistance. The Committee also notes from the APEC Progress Report that: (i) scholarship programmes for needy children for access to senior secondary schools have been adopted; (ii) District Child Protection Teams (DCPT) and Community Child Protection Teams (CCPT) were established as OVC coordinating mechanisms along with other stakeholders and labour inspectors; and (iii) a National Standards and Guidelines for Care of Vulnerable Children has been adopted for DCPTs, CCPTs, civil society organizations and other caregivers. This report further indicates that within the CGP, 33,000 households have benefitted in cash and 8,063 individuals benefited in kind. The Committee notes, however, that according to the 2019 estimates from UNAIDS, about 85,000 children aged 0–17 are orphans due to HIV/AIDS in Lesotho. ***While taking due note of the various measures taken by the Government for children orphaned by HIV/AIDS and other vulnerable children, the Committee requests the Government to continue its efforts to ensure that such children, who are at an increased risk of being engaged in the worst forms of child labour, are protected from these worst forms. It requests the Government to continue to provide information on specific measures taken in this regard, and on the results achieved, particularly the number of OVCs benefiting from these initiatives and the nature of the assistance provided.***

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

## Madagascar

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), which were received on 17 September 2013.

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the last National Survey on Child Labour (ENTE), more than one in four children in Madagascar between 5 and 17 years of age (28 per cent) work, namely 1,870,000 children. Most working children are in agriculture and fishing, where most of them are employed as family helpers. As regards children between 5 and 14 years of age, 22 per cent are working and 70 per cent attend school. The

Committee also noted the allegations of the General Confederation of Workers' Unions of Madagascar (CGSTM) that many underage children from rural areas are sent to large towns by their parents to work in the domestic sector under conditions that are often dangerous. Moreover, these children have not necessarily completed their compulsory schooling. The Committee previously noted that the National Plan of Action against Child Labour in Madagascar (PNA) was in its extension phase in terms of staffing, beneficiaries and coverage (2010–15). The Government indicated that the workplan of the National Council for Combating Child Labour (CNLTE) for 2012–13 had been adopted. The Government also reported on a number of projects, including the AMAV project against child domestic labour and the plan of action against child labour in vanilla plantations in the Sava region, which was implemented under the ILO–IPEC TACKLE project.

The Committee notes the observations of SEKRIMA stating that the practice of child labour persists in Madagascar. SEKRIMA also highlights a very high drop-out rate during the first five years of schooling.

The Committee notes the Government's indications that the PNA has partly been implemented by mobilization activities under the AMAV project, particularly in the Amoron'i Mania region, with the display of four "Red card against child labour" billboards, the distribution of flyers on combating child domestic labour and awareness-raising activities concerning revision of the *dina* (local convention) in order to incorporate the issue of child domestic labour. Moreover, a total of 125 children between 12 and 16 years of age were withdrawn from domestic labour and trained for the competition to obtain a diploma. The Government also indicates that each year it celebrates the World Day Against Child Labour as a means of mass awareness raising while continuing to display posters in working-class neighbourhoods and hold discussions with parents, local authorities and social partners. It also mentions that there are currently 12 Regional Councils for Combating Child Labour (CRLTEs). The Committee further notes that the capacities of various entities for combating child labour have been reinforced, namely 50 entities involved in vanilla production in the Sava region and 12 in the Antalaha region, 91 members of trade union organizations, 43 journalists and three technicians of the National Institute of Statistics. Lastly, the Committee notes the Government's indication that in 2014 the CNLTE revamped Decree No. 2007-263 of 27 February 2007 concerning child labour and Decree No. 2005-523 of 9 August 2005 establishing the CNLTE, its tasks and structure. Further to a study on hazardous work, 19 types of hazardous work were officially recognized in 2013 and incorporated into the Decree under adoption. While noting the measures taken by the Government, the Committee observes that the 2012 National Survey of Employment and the Informal Sector (ENEMPSI 2012) reveals that 27.8 per cent of children are working, namely 2,030,000 children. The survey also shows that 28.9 per cent of children between 5 and 9 years of age (83,000) and 50.5 per cent of children between 10 and 14 years of age (465,000) do not attend school. ***While welcoming the Government's efforts to improve the situation, the Committee urges the Government to intensify its efforts to ensure the progressive elimination of child labour. It requests it to provide information on the results achieved by the implementation of the PNA and also on the activities of the CNLTE and CRLTEs. It requests the Government to provide a copy of the revised version of Decree No. 2007-263, once it has been adopted.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that, according to UNESCO, the age of completion of compulsory schooling is lower than the minimum age for admission to employment or work. The Committee observed that the official age of access to primary education is 6 years and the duration of compulsory schooling is five years, meaning that the age of completion of compulsory schooling is 11 years. The Committee noted the CGSTM's allegation that no changes had yet been made by the Government to resolve the problem of the difference between the age of completion of compulsory schooling (11 years) and the minimum age for admission to employment or work (15 years). The Committee noted the Government's indication that the Ministry of Education was pursuing its efforts so as to be able to take measures to resolve the gap between the minimum age for admission to employment or work and the age of completion of compulsory schooling.

The Committee notes the Government's indications that the Ministry of Education organized a "national education convention" in 2014 consisting of in-depth national consultations on the implementation of inclusive, accessible and high-quality education for all. However, the Committee notes with ***regret*** that the question of the age of completion of compulsory schooling has still not been settled and has remained under discussion for many years. It reminds the Government that compulsory schooling is one of the most effective means of combating child labour, and underlines the need to link the age for admission to employment or work to the age of completion of compulsory schooling, as established in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). The Committee observes once again that, as stated in the 2012 General Survey on the fundamental Conventions, if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (paragraph 371). ***Observing that the Government has been discussing this matter for ten years, the Committee urges the Government to take measures, as a matter of urgency, to raise the age of completion of compulsory schooling so that it coincides with the age of admission to employment or work in Madagascar. It requests the Government to provide information on the progress achieved in this respect.***

*Article 6. Vocational training and apprenticeships.* Further to its previous comments, the Committee notes the Government's indication that the Ministry of Employment, Technical Education and Vocational Training has prepared a bill on the national employment and vocational training policy (PNEFP) in collaboration with the ILO and in consultation with the social partners. The Government indicates that the bill is awaiting approval before being submitted to Parliament for adoption. ***The Committee requests the Government to take the necessary measures to speed up the adoption of the bill concerning apprenticeships and vocational training. It requests the Government to provide a copy of this legislative text once it has been adopted.***

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

***The Committee notes the observations of the International Organisation of Employers (IOE) received on 30 August 2017 and requests the Government to provide its comments in this respect.***

***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)***

The Committee notes the Government's report, received on 25 October 2016, and the in-depth discussion on the application of the Convention by Madagascar in the Committee on the Application of Standards at the 105th Session of the International Labour Conference in June 2016.

*Articles 3(b) and 7(1) of the Convention. Worst forms of child labour and sanctions. Child prostitution.* In its previous comments, the Committee noted that section 13 of Decree No. 2007-563 of 3 July 2007 respecting child labour categorically prohibits the procuring, use, offering or employment of children of either sex for prostitution and that section 261 of the Labour Code and sections 354–357 of the Penal Code, which are referred to in Decree No. 2007-563, establish effective and dissuasive sanctions. The Committee noted the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA) indicating that the number of girls under the age of majority, some as young as 12 years old, who are engaged in prostitution is increasing especially in cities, that 50 per cent of prostitutes in the capital, Antananarivo, are minors, and 47 per cent engage in prostitution because of their precarious situation. For fear of reprisals, 80 per cent of them prefer not to turn to the authorities. Furthermore, the Government has strengthened the capacity of 120 actors engaged in tourism in Nosy-Be and 35 in Tuléar in relation to sexual exploitation for commercial purposes. However, the Committee noted the absence of information on the number of investigations, prosecutions and convictions of those engaged in commercial sexual exploitation. It also noted the increase in sex tourism involving children, the insufficient measures taken by the Government to combat this phenomenon and the low number of prosecutions and convictions, all of which fosters impunity.

The Committee notes that the Conference Committee recommended the Government to strengthen its efforts to ensure the elimination of the sexual exploitation of children for commercial purposes and sex tourism.

The Committee notes the Government's indication in its report that the Ministry of Internal Security, through the Police for Morals and the Protection of Minors (PMPM), is one of the agencies responsible for the enforcement of penal laws on the sexual exploitation of children for commercial purposes, including prostitution. The PMPM centralizes criminal charges concerning children and is responsible for conducting investigations into alleged perpetrators. The Government adds that the PMPM regularly makes unannounced raids on establishments that are open at night to monitor the identity and age of the persons present, but that it is difficult to determine whether the minors who are found are prostitutes. Moreover, the Committee notes that a code of conduct for actors in the tourism industry was signed in 2013. The code of conduct seeks to raise awareness among all actors in tourism with a view to bringing an end to sexual tourism in the country. The Committee also notes the statistics provided by the Government on the cases handled by the courts of first instance in Betroka, Ambatolampy, Arivonimamo, Nosy-be, Taolagnaro, Vatomandry, Mampikony and Ankazobe. It notes that in 2015 no cases of the exploitation of minors or of sex tourism involving minors were brought before these courts. The Committee is therefore once again bound to note with ***deep concern*** the absence of prosecutions and convictions of perpetrators, which is resulting in the continuation of a situation of impunity which seems to persist in the country. ***The Committee therefore urges the Government to take immediate and effective measures to ensure that robust investigations and effective prosecutions are carried out on persons suspected of procuring, using, offering and employing children for prostitution, and that sufficiently effective and dissuasive penalties are imposed. It requests the Government to continue providing statistical information on the number and nature of the violations reported, investigations, prosecutions, convictions and criminal penalties imposed in this respect. Finally, the Committee requests the Government to provide information on the results achieved as a result of the dissemination of the code of conduct among the various actors in the tourism sector.***

*Clause (d). Hazardous types of work. Children working in mines and quarries, and labour inspection.* In its previous comments, the Committee noted that children work in the Ilakaka mines and in stone quarries under precarious and sometimes hazardous conditions, and that the worst forms of child labour are found in the informal economy and in rural areas, which the labour administration is unable to cover. The Committee also noted that the work carried out by children in mines and quarries is a contemporary form of slavery, as it involves debt bondage, forced labour and the economic exploitation of those concerned, particularly unaccompanied children working in small-scale mines and quarries. It noted that children work from five to ten hours a day, that they are engaged in transporting blocks of stone or water, and that some boys dig pits one metre in circumference and between 15 and 50 metres deep, while others go down the pits to remove the loose earth. Children between three and seven years of age, often working in family groups, break stones and carry baskets of stones or bricks on their heads, working an average of 47 hours a week when they are not enrolled in school. Moreover, the working conditions are unhealthy and hygiene is extremely poor. All of the children are also exposed to physical and sexual violence and to serious health hazards, particularly due to the contamination of the water, the instability of pits and the collapse of tunnels.

The Committee notes that the Conference Committee recommended the Government to take measures to improve the capacity of the labour inspectorate. It also notes the Government's indication that, in the context of the National Plan of Action to Combat Child Labour (PNA), the labour inspectorate envisages conducting inspections to take preventive and protective measures with a view to combating child labour in mines and quarries in the regions of Diana, Ihorombe and Haute Matsiatra. The Committee notes that the Government representative to the Conference Committee indicated that the lack of resources is a major obstacle to the adoption of rigorous measures. For example, labour inspectors do not have means of transport, even though the Government indicates in its report that one of the main obstacles to inspections by labour inspectors is the fact that mining sites, located on the outskirts of large cities, are often difficult to access. The Committee notes with ***deep concern*** the situation of children working in mines and quarries under particularly hazardous conditions. ***The Committee once again urges the Government to take the necessary measures to ensure that no children under 18 years of age can be engaged in work which is likely to harm their health, safety or morals. It requests the Government to provide information on the progress made in this respect, particularly in the context of the PNA, and the results achieved in removing these children from this worst form of child labour. The Committee also requests the Government to improve the capacities of the labour inspectorate, in particular by providing the necessary resources, such as vehicles, to enable labour inspectors to have access to remote sites.***

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Street children.* In its previous comments, the Committee noted that the Ministry of Labour and Social Legislation (MTLS) was continuing its programme of school enrolment and training for street children in the context of the Public Investment Programme for Social Action (PIP). It however noted that the number of street children has increased in recent years and that the action taken by the Government to help them is still minimal. The Government indicated that the programmes financed under the PIP have the objective of removing 40 children a year from the worst forms of child labour, or 120 children over three years. The Committee nevertheless noted that there are about 4,500 street children in the capital, Antananarivo, most of whom are boys (63 per cent) who live from begging or sorting through rubbish. Girls living on the streets are frequently victims of sexual exploitation to meet their subsistence needs, or under pressure from third parties. Others are engaged in domestic work, swelling the ranks of exploited child workers.

The Committee notes that the Conference Committee, in its conclusions, requested the Government to increase funding for the PIP with a view to removing children from the streets and for awareness-raising campaigns.

The Committee notes the Government's indication that the Ministry of the Population, Social Protection and the Promotion of Women has set up a census programme of children living and working on the streets and homeless families for the period 2015–16. The objective of this programme is to determine the number of children living and working on the streets, identify the needs of homeless families and develop a short-, medium- and long-term plan of action to deal with them. The Committee notes that studies have been carried out, data analysed and interpreted, and shelters set up. The next stages will consist of the provision of shelter, care, guidance, education, school enrolment and placement or repatriation of the persons concerned. ***The Committee requests the Government to continue taking effective and time-bound measures to ensure the targeted implementation of the PIP's programmes, and requests it to intensify its efforts to ensure that street children are protected from the worst forms of child labour and are rehabilitated and integrated in society. It requests the Government to provide information on the results achieved in this respect. The Committee also requests the Government to provide information on the data collected through the census programme on children living and working in the streets and homeless families, as well as the results achieved in removing them from this situation and preventing them from becoming engaged in the worst forms of child labour.***

*Application of the Convention in practice.* The Committee previously noted that 27.5 per cent of children, or 2,030,000, are engaged in work, of whom 30 per cent live in rural areas and 18 per cent in urban areas. The Committee also noted that 81 per cent of child workers between 5 and 17 years of age, or 1,653,000 children, are engaged in hazardous types of work. Agriculture and fishing account for the majority of child labour (89 per cent), and more than six out of ten working children have reported health problems resulting from their work over the past 12 months. The Committee further noted that child domestic labour is often a feature of the lives of poor rural families who send their children to urban areas in response to their precarious situation. Child domestic workers may be forced to work up to 15 hours per day, and most of them receive no wages, which are paid directly to their parents. In some cases, they sleep on the floor, and many are victims of psychological, physical or sexual violence. The Committee expressed its deep concern at the situation and number of children under 18 years of age forced to perform hazardous types of work.

The Committee notes the Government's indication that it is intensifying its efforts to combat child labour through the Manjary Soa project. The Manjary Soa Centre, established in 2001, offers selected children second chance education. Once these children have been reinserted into the public education system, the Centre covers their school fees and provides them with the necessary school supplies. The Committee also notes the 2014–16 project to combat child labour in the regions of Diana and Atsimo Andrefana. The Government indicates that the objective of this project is to reinforce action in support of the socio-economic reintegration of 100 girls under 18 years of age, who have been removed from sexual exploitation for commercial purposes in Nosy-be, Toliara and Mangily. ***The Committee requests the Government to intensify its efforts to eliminate the worst forms of child labour, and particularly hazardous types of work, and to provide information on any progress made in this regard and the results achieved.***

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

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

## Mauritania

### Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee examined the application of the Convention on the basis of the supplementary information received from the Government this year (see *Article 1* below) and also on the basis of the information at its disposal in 2019.

The Committee notes the observations of the Free Confederation of Mauritanian Workers (CLTM) received on 12 June 2019.

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee noted the indications of the International Trade Union Confederation (ITUC), according to which the Ministry of Labour authorized work by 13-year-old children. It also noted the observations of the CLTM, to the effect that young children, including the children of slaves and former slaves, are working in hazardous conditions in agriculture, small-scale fishing, construction work and garbage removal. It also noted that, according to the "MICS4 – Multiple Indicator Cluster Survey" finalized by the National Statistics Office in 2014, 22 per cent of children between 5 and 14 years of age were involved in child labour. The Committee requested the Government to take the necessary measures to

ensure the effective abolition of child labour. The Committee also noted the adoption of the National Plan of Action on the Elimination of Child Labour 2015–20 (PANETE–RIM), and requested the Government to provide information on the activities and results achieved through the Plan of Action.

The Committee notes the information provided by the Government in its report, indicating that a National Council for Children has been set up, in order to assist the department responsible for children with the coordination, preparation, implementation and monitoring/evaluation of policies, strategies and programmes for children. The Government also indicates that ten regional childhood protection boards have been set up, which enabled the identification in 2017 of over 17,000 child victims of violence, exploitation, discrimination, abuse and negligence, including working children. It adds that awareness-raising events against child labour were organized during the year. The Committee further notes the Government's information in its supplementary report that virtual training was carried out in 2020 on child labour in agriculture and stockbreeding, in order to assist formal and non-formal education structures to raise the awareness of children from rural communities regarding the prohibition and dangers of child labour in agriculture and stockbreeding. Ten civil society organizations located in Guidimakha (in the south of the country) received this training.

Furthermore, the Committee notes the ILO information that, in the context of the "MAP 16" project launched in Nouakchott in March 2019, an agreement was established in the small-scale fishing sector to combat child labour in national supply chains. In addition, the Ministry for Children and the Family was due to launch an interactive guide in October 2019 for the prevention of child labour in Mauritania, designed, inter alia, for members of the PANETE-RIM steering committee and members of the national child protection system.

The Committee observes that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of November 2018, expressed deep concern at the high prevalence of child labour in the informal, agricultural, fishery and mining sectors, and at the lack of resources allocated for the implementation of the PANETE-RIM (CRC/C/MRT/CO/3-5, paragraph 40).

Furthermore, the Committee notes the observations of the CLTM, to the effect that children work in all sectors of activity, including hazardous work likely to jeopardize their health, safety or morals.

While noting the measures taken by the Government, the Committee expresses its ***concern*** at the situation of children working below the minimum age, often in hazardous conditions. ***The Committee urges the Government to continue its efforts to ensure the progressive elimination of child labour and to continue providing information on the activities and results of the National Plan of Action on the Elimination of Child Labour (PANETE–RIM). The Committee also requests the Government to provide information on the activities of the National Council for Children and on the regional childhood protection boards for combating child labour.***

*Article 3(3). Admission of children to hazardous work from the age of 16 years.* In its previous comments, the Committee noted that although section 1 of Order No. 239 of 17 September 1954, as amended by Order No. 10.300 of 2 June 1965 concerning child labour, prohibits the employment of children under 18 years of age in hazardous work, certain provisions, such as sections 15, 21, 24, 25, 26, 27 and 32 of Order No. 239 and section 1 of Order No. R-030 of 26 May 1992, set forth exceptions to this prohibition for young persons between 16 and 18 years of age. The Committee also noted the allegation made by the General Confederation of Workers of Mauritania (CGTM) that children are exploited in hazardous work in the major cities, and it asked the Government to ensure that the performance of hazardous work by young persons between 16 and 18 years of age is only authorized under strict conditions of protection and prior training, in accordance with *Article 3(3)* of the Convention. The Committee notes the Government's indication that it will take the necessary steps to bring the national legislation into line with the Convention, as part of the review of the Labour Code, and that it will ensure that the Orders in question are amended so as to provide that the performance of hazardous work by young persons between 16 and 18 years of age is only authorized in accordance with *Article 3(3)* of the Convention. ***The Committee expresses the firm hope that Orders Nos 239 and R-030 will be amended so that the performance of hazardous work by young persons between 16 and 18 years of age is only authorized in accordance with Article 3(3) of the Convention. The Committee requests the Government to provide information on the progress made in this respect.***

*Article 7(3). Determination of light work.* In its previous comments, the Committee noted that, under section 154 of the Labour Code, no child between 12 and 14 years of age may be employed without the express permission of the Minister of Labour, and only under certain conditions restricting the hours of such employment. Observing that a substantial number of children were working below the minimum age of 14 years for admission to employment or work, the Committee requested the Government to take the necessary steps to ensure that the competent authority determines the activities in which the employment of, or light work by, children between 12 and 14 years of age may be permitted.

The Committee notes the Government's indications that, as part of the review of the Labour Code, it will take the necessary measures to determine the activities in which the employment of, or light work by,

children between 12 and 14 years of age may be permitted. ***The Committee expresses the firm hope that the Government will take account of the Committee's comments, so that the activities in which the employment or work of children between 12 and 14 years of age is permitted are determined by the competent authority. It requests the Government to provide information on progress made in this respect.***

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

# Netherlands

## Aruba

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 3(2) of the Convention. Determination of types of hazardous work.* In its previous comments, the Committee noted the Government's indication that the proposal to allow the Director of the Labour Department to determine the types of hazardous work was with the Department of Legislation for technical evaluation and revision. The Committee urged the Government to take the necessary measures to ensure that, following the approval of the Department of Legislation, the Director of the Labour Department determines the types of hazardous work at the earliest possible date.

The Committee notes with ***satisfaction*** that the Government adopted Ministerial Decree No. 78 of 2013 which contains a list of types of hazardous work prohibited to young persons under the age of 18 years. This list comprises work involving lifting or pulling heavy weights; working continuously in the same position; work involving contact with toxic, carcinogenic, mutagenic substances as well as explosives, irritants or corrosive substances; work with wild, poisonous or dangerous animals; slaughtering of animals; work in establishments providing alcohol; work with or near dangerous machines or equipment involving fire, explosion, electrocution, bottlenecks, harvesting, cutting; work under water; work with devices that have harmful non-ionizing electromagnetic radiation; work with compressed gases; work exposing children to high noise and vibration; work in environments causing a risk of collapse; work near power lines; and work in hospitals. ***The Committee requests the Government to provide information on the implementation of Ministerial Decree No. 78, including the number and nature of violations regarding young persons engaged in hazardous work.***

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

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

# Pakistan

## Minimum Age Convention, 1973 (No. 138) (ratification: 2006)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year (see *Article 9(1)*) as well as on the basis of the information at its disposal in 2019.

*Article 2(1) of the Convention. Minimum age for admission to employment or work.* The Committee previously noted the Government's statement that, following the 18th Constitutional Amendment, the power to legislate on labour matters had been transferred to the provinces. Accordingly, it noted that the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 (KPK Act 2015) and the Punjab Restriction on Employment of Children Ordinance, 2016 (Punjab Ordinance 2016) contained provisions specifying a minimum age of 14 and 15 years for admission to employment or work, respectively. Noting that the Islamabad Capital Territory (ICT), as well as Balochistan and Sindh provinces had also drafted legislation containing similar provisions, the Committee requested the Government to take the necessary measures to ensure the adoption of the draft laws in the near future.

The Committee notes with ***interest*** the Government's information in its report that the Sindh Prohibition of Employment of Children Act which was adopted in 2017 establishes a minimum age of 14 years for admission to employment or work (section 3(1)). The Government also indicates that the Balochistan Employment of Children (Prohibition and Regulation) Bill, 2019 is under the process of being presented to the Cabinet while the ICT administration is making efforts to revise the provisions of the Employment of Children Act, 1991 with the ILO's support. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Balochistan Employment of Children (Prohibition and Regulation) Bill, 2019 and the revised Employment of Children Act, 1991 of ICT which establishes a minimum age of 14 years for admission to employment or work will be adopted without delay. It requests the Government to provide information on any progress made in this regard.***

*Article 3(1) and (2). Hazardous work and determination of types of hazardous work*. In its previous comments the Committee noted that the KPK Act 2015 and the Punjab Ordinance 2016 provided for two lists of types of hazardous work prohibited to young persons under 18 years of age. It noted that the draft laws from ICT, Balochistan and Sindh also prohibit hazardous work for children below 18 years of age. The Committee requested the Government to take the necessary measures to ensure that the draft laws prohibiting the employment of persons under 18 years of age in hazardous types of work in ICT, Balochistan and Sindh provinces are adopted in the near future, after consultation with the organizations of employers and workers concerned.

The Committee notes with ***satisfaction*** that section 3(2) of the Sindh Prohibition of Employment of Children Act 2017, prohibits the employment of adolescents in 38 hazardous occupations and activities listed in its schedule. The Committee further notes the Government's indication that the Balochistan Employment of Children (Prohibition and Regulation) Bill, 2019 has also updated the list of hazardous occupations and processes prohibited to young persons and the ICT administration is in the process of adopting laws prohibiting hazardous types of work by young persons under the age of 18 years. ***The Committee once again requests the Government to take the necessary measures to ensure that the Balochistan Employment of Children (Prohibition and Regulation) Bill of 2019 and the draft laws of ICT which contain provisions prohibiting the employment of young persons under the age of 18 years in hazardous types of work and occupations are adopted in the near future. It requests the Government to provide information on any progress made in this regard.***

*Article 9(1). Penalties and labour inspectorate.* The Committee previously noted that the enforcement of child labour legislation was weak due to the lack of inspectors assigned to child labour, lack of training and resources, and corruption, and that the penalties imposed were often too minor to act as a deterrent. In this regard, the Committee noted the Government's information that the new laws in Khyber Pakhtunkhwa (KPK) and Punjab provinces on the prohibition of employment of children as well as the Punjab Prohibition of Child Labour at Brick Kilns Act 2016 increased the fines for the violation of their provisions. It further noted the Government's information that reforms of the labour inspection system were being carried out under the Strengthening Labour Inspection System Programme in Pakistan (SLISP) with the support from the ILO country office. The Committee requested the Government to continue its efforts to strengthen the capacity of the labour inspectorate, and to continue providing information on the number and nature of violations relating to the employment of children detected by the labour inspectorate.

The Committee notes the observations made by the Pakistan Workers Federation (PWF) in October 2017 that the incidence of child labour has increased even in the formal sector due to the abolition of the labour inspection system, the imposition of restrictions on inspections or due to the inspections being conditioned on the employer's permission.

The Committee notes the Government's information that the Balochistan Employment of Children (Prohibition and Regulation) Bill, 2019 and the ICT draft laws on child labour have increased the maximum fines for violations of the child labour provisions. It also notes the Government's information regarding the application of the KPK Act of 2015 that, in 2017, 3,367 inspections were conducted, 23 convictions were handed out, out of 36 prosecutions, involving 21,921 Pakistani rupees (PKR) in fines (approximately US$142); while in 2018, 8,367 inspections were conducted, and 95 convictions were handed out, out of 213 prosecutions, involving PKR134,000 in fines (approximately $863). The Committee further notes the Government's information in its supplementary report that in 2019, 9,538 inspections were conducted, 340 prosecutions were conducted and a total fine of PKR 0.56 million was imposed in the 254 cases decided by the courts.

With regard to the application of the Punjab Restriction of Employment of Children Act, 2016 the Committee notes the Government's information that in 2019, 30,676 inspections were conducted, 2673 child labour cases were detected, 25 establishments were sealed, and 1199 persons were arrested. The Government further indicates that in February 2020, the Department of Labour, Balochistan conducted 69 child labour inspections and of the six child labour cases which were prosecuted, in three cases a fine of PKR 14,000 (approximately US$86) were imposed on the violators. The Committee observes that the fines imposed are very low and do not appear to be sufficiently effective and dissuasive.

The Committee further notes from the Government's report under the Labour Inspection Convention, 1947 (No. 81) on the various measures taken within the framework of SLISP to strengthen and improve the capacity of the provincial labour inspectors. According to this information, trainings were provided: to 121 labour inspectors in Punjab on effective monitoring; to 29 labour inspectors in Sindh on risk assessment and accident investigation; and to 40 labour inspectors in Sindh on occupational health and safety in the construction sector. Moreover, a labour inspection profile has been developed and will be finalized by the end of 2019. The Government also indicates that efforts are being made by the provincial governments to increase the annual budget for labour inspection services and for material resources and transport and travel allowances for labour inspectors. ***The Committee requests the Government to continue its efforts to strengthen the capacity of the labour inspectorate, and to continue***

***providing information on the number and nature of violations detected and penalties imposed relating to the employment of children. It also requests the Government to continue to strengthen its measures to ensure that persons who violate the above-mentioned laws are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

*Application of the Convention in practice.* The Committee previously noted the Government's indication that, with the assistance of UNICEF, the governments of Punjab, Sindh, KPK and Balochistan had initiated measures to carry out child labour surveys in their respective provinces. The Committee also noted from the report *Understanding Children's Work in Pakistan: An Insight into Child Labour Data (2010–15) and Legal Framework* that the number of children of 10–17 years of age engaged in child labour had decreased from 4.04 million in 2010–11 to 3.7 million in 2014–15, of which 2.067 million (55 per cent) were in the 10–14 years age group. The Committee urged the Government to strengthen its efforts to prevent and eliminate child labour, and to provide the results of the child labour surveys at the provincial levels once available.

The Committee notes the observations made by the PWF that in Pakistan no dedicated child labour survey has been carried out since 1996. However, all reliable evidence indicates that the incidence of child labour, though showing a decline in recent years, is still considerably high. Child labour is rampant in the agricultural sector, factories, textile, garments, carpet and industrial units, brick kilns, hotels and restaurants, auto workshops and in mines and quarries.

The Committee notes the Government's information that the government of KPK has paid special attention to prevent and eliminate child labour from the province. An exclusive unit on child labour has been established with the Directorate of Labour. It also notes the Government's statement that regular inspections at industrial establishments have gradually led to the complete elimination of child labour from this sector and efforts are being continued to do likewise in the commercial establishments. Furthermore, the Khyber Pakhtunkhwa Child Labour Policy 2018 and the KPK Act of 2015 are a milestone to eliminate child labour from the province. The Government also indicates that the implementation of the Sindh Labour Policy of 2017 and the new laws on child labour will result in the elimination of child labour in the province. The Government further indicates that the child labour survey is ongoing in the provinces of KPK, Sindh and ICT while the project is in the pipeline in Balochistan. The Committee finally notes the Government's statement in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that a comprehensive system is being formulated to eliminate child labour from the country through awareness-raising programmes in the society and the reshaping of the political, economic and social systems of the country and by taking such measures that make child labour a crime.

The Committee notes that according to the Punjab Multiple Indicator Cluster Survey (MICS) findings Report, 2017–18, 13.4 per cent of children aged between 5 and 17 years are engaged in child labour with 10.3 per cent of them involved in hazardous work. Furthermore, the MICS report of 2016–17 of the KPK indicates that over 14 per cent of children of 5–17 years are involved in child labour, of which 12.3 per cent are working in hazardous conditions. The Committee further notes that according to the UNICEF report on the Situation Analysis of Children in Pakistan, 2017, there is a high prevalence of child labour in Pakistan coupled with low rates of school participation. The persistence of child labour has multi layered roots such as poverty, lack of decent work for adults, need for strengthened social protection and the lack of a system that can ensure that all children attend school rather than engaging in economic activities. The Committee finally notes that the Committee on Economic, Social and Cultural Rights, in its concluding observations of July 2017, expressed concern that over 2 million children aged between 10 and 14 years are working and that 28 per cent of them are engaged in hazardous work, including in agriculture, brick kilns, coal mining, on the streets and in domestic settings (E/C.12/PAK/CO/1, paragraph 63). While taking note of the measures taken by the Government, the Committee must express its ***deep concern*** at the significant number of children under the minimum age who are engaged in child labour, including in hazardous work. ***The Committee therefore urges the Government to take the necessary measures to ensure the progressive elimination of child labour, including through continued cooperation with the ILO, and to provide information on the results achieved. The Committee also once again requests the Government to provide the results of the child labour surveys at the provincial levels once available.***

The Committee is raising other points in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year (see *Articles 3(a)* and *5*), as well as on the basis of the information at its disposal in 2019.

*Articles 3(a) and 5 of the Convention. Debt bondage and monitoring mechanisms.* The Committee previously noted that the Bonded Labour System (Abolition) Act (BLSA) 1992 abolished bonded labour and

that district vigilance committees (DVCs) were constituted to monitor the implementation of the BLSA. It noted that the BLSA was applicable in Islamabad Capital Territory (ICT), Balochistan and Punjab, while Khyber Pakhtunkhwa (KPK) and Sindh provinces enacted provincial legislation on bonded labour (KPK Bonded Labour System Abolition Act 2015 and Sindh Bonded Labour System Abolition Act 2015). The Committee requested the Government to continue its efforts to eliminate child debt bondage and to strengthen the capacity of DVCs and law enforcement officials responsible for the monitoring of bonded labour.

The Committee notes the Government's information in its supplementary report that the BLSA was adapted in all the provinces while the Punjab government passed the Punjab Bonded Labour System (Abolition) Amendment Act of 2018 which primarily aims at strengthening the ongoing system of inspections and reporting. The Government also indicates that the Provincial Cabinet of Balochistan approved the Elimination of Bonded Labour Bill 2020 which shall be submitted to the law department for vetting. The Bill provides for a punishment of one-year imprisonment and a fine of PKR 0.1 million (US$632.30) to people who are involved in hiring bonded labour. The Committee further notes the Government's information that the DVCs have been revitalized in all the 36 districts of Punjab and are working vigilantly to eradicate child bonded labour under the district administration, particularly in brick kilns and workshops. The Government indicates that 258 meetings of DVCs were held in 2019 during which no cases of child debt bondage were reported. The provinces of Sindh, KPK and Balochistan are in the process of establishing DVCs. Provincial child and bonded labour units have been established in Punjab and KPK while Sindh, Balochistan and ICT are making efforts in this respect. The Government also indicates that the Sindh administration has registered and brought 740 brick kilns all over the province within the ambit of various labour laws, including the Sindh Prohibition of Employment of Children Act, 2015, in order to combat the menace of bonded labour. The Committee further notes the Government's statement that the provinces are making efforts to strengthen institutional mechanisms for inspection and improvement in enforcement of labour laws on child and bonded labour, extension of coverage of such labour laws to the uncovered sectors and capacity development of inspection staff.

The Committee notes, however, from the National Commission for Human Rights Pakistan report entitled *Towards Abolishing Bonded Labour in Pakistan, 2018* that over 1.3 million persons, including men, women and children in the brick kiln sector in Pakistan are working under conditions of debt bondage. This report further indicates that despite efforts by the Government and civil society, Pakistan remains a country with a large number of its workforce trapped in the systemic cycle of bondage. ***The Committee therefore encourages the Government to intensify its efforts to eliminate child debt bondage, including through the effective implementation of the laws abolishing bonded labour and by establishing DVCs in all the provinces and strengthening their capacity as well as the capacity of the law enforcement officials responsible for the monitoring of child bonded labour. The Committee requests the Government to continue to provide information on the measures taken in this regard and on the results achieved, including the number of child bonded labourers identified by the DVCs and other law enforcement officials, the number of violations reported, investigations conducted, prosecutions, convictions and penal sanctions imposed. The Committee finally requests the Government to take the necessary measures to ensure that the Balochistan Elimination of Bonded Labour Bill 2020 is enacted in the near future.***

*Articles 3(d) and 4(1). Hazardous work.* ***With regard to the adoption of the list of hazardous work, the Committee refers to its detailed comments under the Minimum Age Convention, 1973 (No. 138).***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour. Access to free basic education and the special situation of girls.* The Committee previously noted that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of 11 July 2016, expressed concern at the large number of children (47.3 per cent of all children aged 5 to 16 years) who were not enrolled in formal education, of which the majority had never attended school and at the high dropout rate for girls, 50 per cent in Balochistan and KPK and 77 per cent in the Federal Administered Tribal Areas (CRC/C/PAK/CO/5, paragraph 61). The Committee urged the Government to redouble its efforts to improve access to free basic education for all children, taking into account the special situation of girls.

The Committee notes the Government's information that measures are being implemented to improve the enrolment of children in education, including the provision of monetary incentives through *Khidmat* ATM cards for vulnerable children and children involved in the worst forms of child labour. According to this scheme, 2,000 Pakistani rupees (PKR) (US$12.64) shall be paid to the family while enrolling a child and thereafter PKR1,000 (US$6.32) per month to each child enrolled after verification of their attendance at school. The Government indicates that more than 90,000 identified children working in brick kilns have benefited from this scheme. The Committee also notes the Government's indication that the school enrolment rates have currently reached 50.6 million compared to 48 million during 2016–17, an increase by 5.3 per cent while the gender disparity has also narrowed. The Committee notes from the UNICEF *2018 Annual Report, Pakistan* that the provincial governments have been engaged in

developing key policies with UNICEF such as the Punjab Non-Formal Education (NFE) Policy and the Sindh NFE Policy to enrol 600,000 out-of-school children in school in five years and the KPK NFE policy which will be endorsed shortly. These policies ensure that children excluded from education have opportunities to learn and develop skills through alternative learning pathways (ALP). In 2018, 550 ALP centres in all four provinces received direct UNICEF support, reaching 17,500 children (44 per cent girls). Moreover, UNICEF supported 2,784 early childhood education (ECE) centres across the four provinces enabling 99,400 children (58 per cent girls) to acquire ECE. The Committee, however, notes from the UNICEF report that over 5 million children are out of school, 60 per cent of whom are girls, while the number increases drastically after primary level with 17.7 million adolescents aged 10–16 years, of whom 51 per cent are girls, who are outside formal education. The Committee further notes that according to UNESCO statistics, the net enrolment rate in primary education in 2018 was 67.7 per cent (61.6 per cent female and 73.37 per cent male) and at the secondary level was 38.53 per cent (36.38 per cent female and 40.51 per cent male). While noting the measures taken by the Government, the Committee must express its ***deep concern*** at the low enrolment rates at the primary and secondary education levels and at the high number of out-of-school children. ***Considering that education is key in preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to improve access to free basic education for all children, taking into account the special situation of girls. The Committee requests the Government to continue to provide information on the concrete measures taken in this regard, and to provide statistical information on the results achieved, particularly with regard to increasing school enrolment rates and reducing school drop-out rates and the number of out-of-school children. To the extent possible, this information should be disaggregated by age and gender.***

*Clause (d). Identifying and reaching out to children at special risk. Street children.* The Committee previously noted the increasing number of street children and the lack of a systematic and comprehensive strategy to protect them. It also noted the establishment of centres for the rehabilitation of street children and other vulnerable groups in the provinces of Punjab, Sindh and KPK. It further noted the Government's information that the KPK Government had established a special centre for street children which provides street children with education, health, recreation, sports, boarding, food, career and psychological counselling, and other necessary facilities. However, the Committee noted, from the concluding observations of the CRC of 11 July 2016, that children living or working on the streets, or whose parents were in conflict with the law, were often dealt with by the police rather than trained staff in child protection centres (CRC/C/PAK/CO/5, paragraph 73). The Committee requested the Government to strengthen its efforts to protect street children and to provide information on the measures taken in this regard.

The Committee notes an absence of information in the Government's report on this issue. The Committee observes that according to information available in a 2019 report of the United Nations, entitled *Pakistan's street children,* somewhere between 1.2 and 1.5 million children are thought to be on the streets of Pakistan's major cities. These children, who often have little or no contact with their families, form one of the most vulnerable strata of society and are denied basic rights such as access to shelter, education and healthcare. These children are highly exposed to the risk of being drawn into abusive situations including engagement in child labour and subjection to sexual exploitation, trafficking and arbitrary arrest and detention. ***Recalling that street children are particularly vulnerable to the worst forms of child labour, the Committee urges the Government to take effective and time-bound measures to protect and withdraw these children from engaging in the worst forms of child labour and provide for their rehabilitation and social integration. It requests the Government to provide information on the specific measures undertaken and the results achieved in this regard, particularly the number, age and gender of street children benefiting from shelter and other rehabilitative services.***

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

## Papua New Guinea

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1 of the Convention. National plan of action and application of the Convention in practice.* The Committee previously noted the comments made by the International Trade Union Confederation (ITUC) that child labour occurred in rural areas, usually in subsistence agriculture, and in urban areas in street vending, tourism and entertainment. It noted that Papua New Guinea was one of the 11 countries that participated in the 2008–12 ILO–IPEC ***Time-bound Programme*** entitled "Tackling child labour through education" (TACKLE project) which aimed at contributing to the fight against child labour.

The Committee notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that within the framework of the TACKLE project, a rapid assessment was carried out in Port Moresby targeting children working on the streets and those involved in commercial sexual exploitation. The Committee notes the Government's statement that the findings of the rapid assessment conducted in Port

Moresby were alarming and that it is believed that a similar child labour situation is occurring in other regions of the country. The rapid assessment findings indicate that children as young as 5 and 6 years of age are working on the streets and about 68 per cent of them worked under hazardous conditions. About 47 per cent of the street children between 12 and 14 years of age have never been to school and a further 34 per cent had dropped out of school. The Committee expresses its ***deep concern*** at the situation of children under 16 years of age who are compelled to work in Papua New Guinea. ***The Committee, therefore, urges the Government to strengthen its efforts to improve the situation of children working under the age of 16 years and to ensure the effective elimination of child labour. Noting that there is no concrete or reliable data reflecting the real situation of children in the rest of the country, the Committee urges the Government to undertake a national child labour survey to ensure that sufficient up-to-date data on the situation of working children in Papua New Guinea is available.***

*Article 2(1). Minimum age for admission to employment.* The Committee had previously noted that, although the Government of Papua New Guinea had declared 16 years to be the minimum age for admission to employment or work, section 103(4) of the Employment Act permits a child of 14 or 15 years to be employed during school hours if the employer is satisfied that the child is no longer attending school. It also noted that, by virtue of sections 6 and 7 of the Minimum Age (Sea) Act, 1972, the minimum age to perform work on board ships is 15 years and 14 years, respectively.

The Committee notes the Government's information that the Australian Assistance for International Development through its Facilities and Advisory Services in close consultation with the ILO–IPEC and the Department of Labour and Industrial Relations has undertaken a review of the Employment Act and that the amendment process is ongoing. It also notes the Government's indication that this process will also address the issue related to the minimum age stipulated under the Minimum Age (Sea) Act, 1972. ***Noting that the Government has been referring to the review of the Employment Act and the Minimum Age (Sea) Act for a number of years, the Committee once again urges the Government to take the necessary measures to ensure that the proposed amendments are adopted in the near future. In this regard, it expresses the hope that the amended provisions will be in conformity with Article 2(1) of the Convention.***

*Article 2(3). Age of completion of compulsory education*. The Committee previously noted that education is neither universal nor compulsory in Papua New Guinea, and that the law does not specify a legal age for entering school or an age at which children are permitted to leave school. It noted that the Education Department has developed a ten-year National Education Plan for 2005–15 (NEP) to enable more children to be in school. However, the Committee observed that the NEP seemed intended to make only three years of basic education compulsory up to the age of *9.* Moreover, the Committee noted that according to the ITUC, the gross primary enrolment rate was 55.2 per cent, and only 68 per cent of these children remain at school up to the age of 10, while only less than 20 per cent of the country's children attend secondary school.

The Committee notes from the Government's report under Convention No. 182 that the NEP is being supported by donor agencies to implement programmes focusing on formal education and non-formal education (NFE), including assistance from the Asian Development Bank and the European Union in order to extend the NFE to the needy and the disadvantaged. The Committee notes, however, that according to the findings of the rapid assessment conducted in Port Moresby during 2010–11, although educational reforms are in place, 92.2 per cent of those children who enrolled in grade 3 would drop out along the way. The Committee expresses its ***deep concern*** at the significant number of children under the minimum age of admission to work who are not attending school. In this regard, the Committee must emphasize the desirability of linking the age of completion of compulsory schooling with the minimum age for admission to work, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). If compulsory schooling comes to an end before young persons are legally entitled to work, there may arise a vacuum which opens the door to the economic exploitation of children (see 2012 General Survey on the fundamental Conventions concerning rights at work, paragraph 371). ***Therefore, considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures, particularly within the framework of the NEP, to provide for compulsory education for boys and girls up to the minimum age for admission to employment of 16 years. The Committee requests the Government to provide information on the progress made in this regard.***

*Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work.* In its previous comments, the Committee noted that while certain provisions of the national legislation prohibit hazardous work for children under the age of 16 years, there exist no provisions protecting children between the ages of 16–18 years from hazardous work. The Committee also noted the absence of any list of types of hazardous work prohibited to children under the age of 18 years.

The Committee notes from the Government's report that the ongoing legislative review of the Employment Act will ensure the compliance of the provisions of the Convention related to hazardous work. ***The Committee expresses the firm hope that the amendments to the Employment Act, which will include a prohibition on hazardous work for children under the age of 18 years as well as a determination of types of hazardous work prohibited to such children, will be adopted in the near future. It requests the Government to provide information on any progress made in this regard.***

*Article 3(3). Admission to types of hazardous work from the age of 16 years.* The Committee previously noted that the conditions of work for young people would be examined through the ongoing Employment Act review and that the legislation relating to occupational safety and health shall also be reviewed in a way to ensure that hazardous work does not affect the health and safety of young workers. ***The Committee once again expresses the strong hope that the review of the Employment Act and of the legislation pertaining to occupational safety and health will be completed as soon as possible. It also hopes that the amendments made to the legislation will include provisions requiring that young persons between 16 and 18 years of age who are authorized to perform hazardous types of work receive adequate specific instruction or vocational training in the relevant branch of activity. It requests the Government to provide information on the progress made in this regard in its next report.***

*Article 9(3). Registers of employment*. The Committee previously noted that the Employment Act does not contain any provision requiring the employer to keep registers and documents of people under the age of 18 working for them. It also noted that section 5 of the Minimum Age (Sea) Act provides for registers to be kept by

people having command or charge of a vessel, which contains particulars such as the full name, date of birth, and the terms and conditions of service of each person under *16 years* of age employed on board the vessel. The Committee requested the Government to take the necessary measures to ensure that, in conformity with *Article 9(3)* of the Convention, employers are obliged to keep registers that shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom they employ or who work for them and who are less than *18 years* of age.

The Committee once again notes the Government's information that this issue will be addressed within the review of the Employment Act. ***The Committee expresses the firm hope that the Government will take the necessary measures, without delay, to ensure that employers are obliged to keep register of all persons below the age of 18 years who work for them and to provide information with regard to the progress made in ensuring that the Employment Act and the Minimum Age (Sea) Act are in conformity with Article 9(3) of the Convention.***

***The Committee urges the Government to strengthen its efforts to ensure that, during its review of the Employment Act and the Minimum Age (Sea) Act, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention. The Committee requests the Government to provide information on any progress made in the review of these Acts in its next report and invites the Government to consider seeking technical assistance from the ILO.***

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

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

## Peru

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019.

*Articles 3(a) and (b), and 7(2)(a) and (b) of the Convention. Sale, trafficking and commercial sexual exploitation of children and effective and time-bound measures to prevent the engagement of children in the worst forms of child labour, to remove them from these forms of child labour and to ensure their rehabilitation and social integration.* The Committee previously requested the Government to take immediate and effective measures to ensure the rehabilitation and social integration of child victims of trafficking and commercial sexual exploitation. The Committee also once again requested the Government to ensure that thorough investigations are conducted and robust prosecutions undertaken of persons who employ children in the worst forms of child labour and that sufficiently effective and dissuasive penalties are imposed upon them in practice.

The Committee notes with ***interest*** that, in its supplementary information, the Government refers to the adoption of Act No. 30963 of 18 June 2019 which introduces new sections in the Penal Code in order to strengthen the protection afforded to children against sexual exploitation, providing for prison sentences from 10 years to perpetuity (sections 153-H, 153-I and 153-J). It further notes the adoption of Supreme Decree No. 009-2019-MIMP of 10 April 2019 on the guidelines for the elaboration of an individual reintegration plan for victims of trafficking which provides guidance on the procedures that should be followed by the different stakeholders involved, in order to strengthen the assistance provided to victims of trafficking, including child victims. The Committee takes due note of the Government's indication of the adoption of Act No. 30925 of 5 April 2019, which reinforces the establishment of temporary shelters for victims of trafficking in persons and sexual exploitation. It also notes the adoption of Act No. 3082 of 26 June 2018, which sets out the conditions for the entry of girls, boys and young people into shelters to guarantee their protection and safety. The Act also penalizes providers of tourist services in cases where they facilitate or permit the sexual exploitation of children in their establishments or do not report to the competent authority acts related to the sexual exploitation of children. The Committee also notes the two decisions adopted by the Ministry of Foreign Trade and Tourism: the first decision (No. 430-2018-MINCETUR) approves a code of conduct to combat the sexual exploitation of girls, boys and young people in the field of tourism, intended for providers of tourist services; the second decision (No. 299-2018-MINCETUR) concerns the content of posters to be placed in tourist establishments which shall contain information relating to sexual exploitation, as well as the legal provisions establishing criminal penalties for offences related to the sexual exploitation in the tourism sector of girls, boys and young persons.

The Committee notes the executive report of the Information Department of judicial authorities specializing in organized crime and in the crime of trafficking in persons. This report indicates that 42 per cent of the victims of trafficking are children and that exploitation through labour and sexual exploitation were the main types of trafficking between 2016 and 2019. During this period, there were 77 child victims of trafficking, aged between 0 and 5 years, 256 child victims of trafficking aged between 6 and 11 years and 1,435 child victims of trafficking aged between 12 and 17 years. The Committee also notes that, according to the information systems of the Office of the Public Prosecutor, a total of 163 complaints were

registered in 2018 by the judicial authorities in the various provinces of the country concerning crimes relating to the sexual exploitation of children. In its supplementary information, the Government adds that in, 2019, the Directorate for the Investigation of Trafficking in Persons and Smuggling of Migrants of the National Police (DIRCTPTIM PNP) identified 222 child victims of trafficking (146 girls and 76 boys).

The Committee notes the action taken for the psychosocial support of victims of trafficking for sexual exploitation in emergency centres for women, within the framework of the National Programme to Combat Family and Sexual Violence of the Ministry of Women and Vulnerable Peoples. The emergency centres for women also provide support for legal procedures to facilitate access to justice, the imposition of penalties on aggressors and the compensation of victims. Between January and April 2019, a total of 23 girls under 18 years of age who were victims of sexual exploitation benefited from the emergency centres for women. The Protection Department of the General Directorate for Girls, Boys and Young People also offers immediate support for child victims of trafficking through the establishment of 17 special protection units throughout the country. The Committee notes that, in its supplementary information, the Government indicates that in 2019, the specialized teams of the special protection units provided support for 219 child victims of trafficking (167 girls and 52 boys) and, between January and May 2020, the special protection units have supported 34 child victims of trafficking (30 girls and four boys). The regions of Lima and Madre de Dios also have residential centres for girls and young persons who are victims of trafficking in persons. These centres provide individual and adapted care according to the needs of the victims and have multidisciplinary teams which take action with a view to family reintegration when that contributes to the welfare of the victim. Between January and March 2019, the centres provided support for 84 young victims of trafficking in persons. Finally, the Committee notes that the Government has trained 607 operators for the residential centres from areas with high rates of sexual exploitation, and 153 operators in referral hospitals in Lima specializing in the issue of the sexual exploitation of girls, boys and young people. The Committee notes that, in their observations, the Autonomous Workers' Confederation of Peru (CATP), the Confederation of Workers of Peru (CTP), the General Confederation of Workers of Peru (CGTP), and the Single Confederation of Workers of Peru (CUT-Perú) express concern about the lack of measures implemented by the Government to ensure the social integration of child victims of trafficking and commercial sexual exploitation. ***While noting the efforts made by the Government to ensure that support is provided for child victims of trafficking and commercial sexual exploitation, the Committee once again requests the Government to ensure that thorough investigations and prosecutions are carried out on persons engaging in such acts and that sufficiently effective and dissuasive sanctions are imposed in practice. It once again requests the Government to provide information on the number of convictions and penalties imposed against such persons. It also requests the Government to continue to take measures to remove and provide assistance to child victims of trafficking and to continue to provide information on the number of child victims who have benefitted from such assistance.***

*Articles 3(d) and 7(2)(a) and (b). Hazardous types of work and effective and time-bound measures to prevent the engagement of children in the worst forms of child labour, to remove them from these forms of child labour and to ensure their rehabilitation and social integration.* 1. *Child labour in artisanal mines.* The Committee previously requested the Government to intensify its efforts to protect children involved in hazardous work in mines. It also requested the Government to provide information on the measures adopted and the results achieved in the context of the implementation of the National Strategy for the Prevention and Eradication of Child Labour 2012–21 (ENPETI) for the withdrawal of children under 18 years of age from hazardous work in artisanal mines and for their rehabilitation and social integration.

The Committee notes from the Government's report the approval of the second version, of 7 May 2019, of the action protocol for the group of labour inspectors specializing in forced labour and child labour. The new version of the protocol gives priority to strengthening the capacities of inspectors in relation to the worst forms of child labour and also promotes collaboration between the National Supervisory Authority of Labour Inspection (SUNAFIL), the national police, the Offices of the Public Prosecutor and of the Attorney-General, and the Office of the Defender of the People, in accordance with their specific areas of competence. In that regard, the Committee notes that, in their observations, the CATP, CTP, CGTP and CUT-Perú express concern about the lack of inspection activities carried out by the SUNAFIL in the mining and quarrying sector in order to prevent child labour.

As regards the authorization of work by young people, the Committee notes that, in its supplementary information, the Government refers to the adoption of Supreme Decree No. 18-2020-TR of 25 August 2020 which establishes the administrative procedure for prior authorization of young persons to work as employees or under a dependency relationship. Regional labour departments will have to carry out an evaluation of the activities involved and the arrangements for work by young people before granting an authorization. This evaluation will also serve as a basic register for the labour inspection activities of the SUNAFIL in relation to employers who engage young persons in work. However, the Committee notes with ***concern*** that the Government has not provided information on the protection of children engaged in hazardous work in mines. ***In this respect, the Committee once again requests the Government to provide information on the measures adopted and the results achieved, in the context of***

***the implementation of the ENPETI and multisectoral action to remove children under 18 years of age from hazardous work in artisanal mines and to ensure their rehabilitation and social integration. It also requests the Government to provide information on the number and outcome of inspections carried out by the SUNAFIL in the mining and quarrying sector, including as a result of the action protocol of 2019.***

2. *Child domestic labour.* The Committee previously requested the Government to take the necessary measures to strengthen the capacity for action of the labour inspection services to prevent children engaged in domestic work from being involved in hazardous types of work, to remove them from such work and ensure their rehabilitation and social integration. It also once again requested the Government to provide information on the results achieved.

The Committee notes that the Government is currently engaged in reinforcing the capacity for action of labour inspection services through the new version of the action protocol for the group of labour inspectors specializing in forced labour and child labour.

The Committee also notes that, since the beginning of 2019, only one labour inspection compliance order was issued to verify compliance with the regulations on child labour in the household work sector. In its supplementary information, the Government indicates that such order resulted in the elaboration of a labour inspection report, resulting in the case being closed. In that regard, the Committee notes that, in their observations, the CATP, CTP, CGTP and CUT-Perú express concern at the low number of labour inspection orders issued regarding child labour in the household work sector, and highlight that the actions of labour inspectors should focus on awareness-raising and capacity-building of all stakeholders involved. ***The Committee once again urges the Government to take the necessary measures to strengthen the capacity for action of the labour inspection services to prevent children engaged in domestic work from being involved in hazardous types of work, to remove them from such types of work and ensure their rehabilitation and social integration. It also requests the Government to provide information on the results achieved.***

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

## Philippines

### Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government (see paragraph concerning the application of the Convention in practice) as well as on the basis of the information at its disposal in 2019.

*Article 2(1) of the Convention. Scope of application. Children working on their own account or in the informal economy.* The Committee previously noted the results achieved following the implementation of the Campaign for Child Labor-Free Barangays, such as bringing the total number of child labour free *barangays* (villages) to 213 and removing a total of 7,584 children from child labour and placing them in schools. The Committee however, noted from the country report "Understanding child labour and youth employment outcomes in the Philippines, December 2015", (UCW 2015 report), that child labour in the Philippines continues to affect an estimated 2.1 million children aged 5–17 years of which 62 per cent work in agriculture, about 6 per cent are self-employed and an additional 3 per cent work in private households, most likely as domestic workers. The Committee requested to pursue its efforts to ensure that children working in the informal economy or on a self-employed basis benefit from the protection of the Convention.

The Committee notes the Government's information in its report that as of December 2018, a total of 348 *barangays* have been declared as child labour-free by the Department of Labour and Employment (DOLE), while in June 2016, the Municipality of Angono was recognized as the first child labour-free municipality. The Committee also notes the Government's information regarding the various orders issued through DOLE to combat child labour, such as: (i) the Department Order No. 173 of 2017 on the Revised Guidelines in the implementation of DOLE Integrated Livelihood and Emergency Employment Programmes (DILEEP) which provides that the beneficiaries of livelihood programs shall not be engaged in child labour; (ii) the Department Order No. 175 of 2017 on the Implementing Rules and Regulations of Republic Act No. 10917 which provides that the beneficiaries of the Special Progam for Employment of Students shall not be engaged in hazardous work; (iii) the Department Order No. 159 of 2016 which contains provisions prohibiting child labour in the sugar cane industry; and (iv) the Department Order No. 156 of 2016 on the Rules and Regulations Governing the Working and Living conditions of fishers on board fishing vessels in Commercial Fishing Operations which provides for penalties for engaging child labour in this sector. The Committee further notes from the Government's report that one of the aims of the proposed amendments to the Republic Act of 9231 is to address child labour in the informal sector. ***Noting that a high number of children are involved in child labour in the informal sector, the Committee requests the Government to intensify its efforts to ensure that children working in the informal economy or on a***

***self-employed basis benefit from the protection afforded by the Convention. It requests the Government to continue to provide information on the measures taken in this regard as well as the results achieved, in terms of the number of these children who are effectively protected and provided with the appropriate services, in particular following the adoption of the above-mentioned ordinance.***

*Application of the Convention in practice.* In its previous comments, the Committee noted that the Government developed the HELP ME Convergence Program as a sustainable and responsive convergence programme to address child labour. It also noted that the ABK3 LEAP project (implemented by World Vision to combat exploitative child labour in the sugar cane sector through education) had achieved significant results in eliminating child labour through providing assistance and educational and livelihood support to children. The Committee requested the Government to strengthen its efforts, including through the effective implementation of the HELP ME Convergence Program, to progressively eliminate child labour.

The Committee notes the Government's information that in 2017, the Government, in collaboration with the ILO, launched several programmes to eliminate child labour, such as the Convening Actors to Reduce Child Labour and Improve Working Conditions in Artisanal and Small-Scale Gold Mining (ASGM), the CARING Gold Mining project and the SHIELD Against Child Labour project. According to the Government's report, the CARING Gold Mining project which seeks to address the problem of poverty in ASGM is piloted in Camarines Norte and South Cotabato. As of July 2019, 66 children were removed from child labour through this project. Moreover, the SHIELD Against Child Labour project which aims to eliminate child labour and its worst forms, particularly in small-scale gold mining, deep sea fishing and sugar cane industry is being implemented in four regions. In 2018, with the support of ILO, a Child Labour Local Registry (CLLR) was developed which will be used at the *barangay* level to serve as a repository of data of child labourers. The Committee notes the Government's information that within the framework of this project, a total of 596 children were identified as child labourers, of which 380 children were removed from child labour and provided with the necessary assistance. The Committee further notes the Government's information in its supplementary report that following the implementation of the Administrative Order No. 142 of 2018 on Guidelines on the Profiling of Child Labourers and Provisions of Services to Remove them from Child Labour, the DOLE, through its 16 regional offices, conducted the profiling of child labourers by tapping Government Internship Program (GIP) beneficiaries to locate, identify and remove children from child labour and to provide them with necessary services. In this regard, the Committee notes that from 2018-2019, a total of 275,614 child labourers were identified, of which 18,151 children were provided with necessary services and 202,236 children were referred for the provision of necessary services. In order to fast track the referral of identified child labourers and assess their needs, the DOLE hired 301 project-based community facilitators who were assigned to its 16 regional offices and 92 field offices. Moreover, a Revised Guideline which superseded the Order No 142 was issued through Administrative Order No. 579 of 2019, according to which child labourers identified shall be monitored at least once every six months to track their progress. The Government further indicates that for 2020, the DOLE aimed to identify and remove 175,000 children from child labour and hire 2,500 GIP beneficiaries. However, due to the declaration of state of National Emergency in the country due to the COVID-19 pandemic, the identification of children has been suspended for a year.

The Government further indicates that within the Livelihood Assistance to Parents of Child Labourers Program, up to 2018, a total of 32,507 parents of child labourers and in 2019, 3,533 parents of child labourers were provided with livelihood assistance. Furthermore, the *Sagip Batang Manggagawa* Quick Action Teams (SBM QATS), an inter-agency mechanism to monitor and rescue children from child labour, conducted a total of 955 rescue operations until 2018, wherein a total of 3,565 child labourers were removed from hazardous and exploitative working conditions. In 2019, the SBM QATS conducted 19 rescue operations and removed 44 children from hazardous and exploitative conditions. The Project Angel Tree provided assistance, including school supplies, to a total of 72,440 children involved in child labour or children who are at risk of engaging in child labour.

The Committee also notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182) that the National Child Labour Committee which is the central policy and coordinating mechanism for the implementation of the Philippine Program Against Child Labor agreed to target one million children to be withdrawn from child labour by 2025. The Committee further notes the detailed information provided by the Government on the progress made in the implementation of the Philippine Program Against Child Labour Strategic Framework for 2017-2022. Accordingly within the framework of this strategy: (i) a National Council Against Child Labour, which replaced the National Child Labour Committee was established to coordinate the prevention and elimination of child labour in the Philippines; (ii) financial support was strengthened for programs supporting withdrawal of children from hazardous work; (iii) anti-child labour laws were improved and enforced at the national and local levels; (iv) access of child labourers and their families to social protection, health, education and decent work was expanded; (v) generation, dissemination and use of knowledge on child labour among stakeholders, policy

makers and program implementers was improved; and (vi) a national child labour monitoring and evaluation system was established and maintained.

The Committee, however, notes that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations of October 2016, reiterated its concern that an estimated 1.5 million children between the ages of 5 and 14 are engaged in child labour and that half of them are working in hazardous or dangerous conditions and are exposed to various forms of exploitation (E/C.12/PHL/CO/5–6, paragraph 37). While taking note of the measures taken by the Government to combat child labour, the Committee must express its ***concern*** that there remains a significant number of children engaged in child labour, particularly in hazardous conditions in the country. ***The Committee therefore urges the Government to strengthen its efforts to progressively eliminate child labour. It requests the Government to continue to provide information on the measures taken in this regard, including within the framework of the Philippine Program Against Child Labor and on the results achieved.***

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, (see *Articles 3* and *7(1),* and *Articles 3(b) and 7(2) (a) and (b))* as well as on the basis of the information at its disposal in 2019.

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or practices similar to slavery.* 1. *Sale and trafficking of children.* In its previous comments, the Committee noted the measures taken by the various Government departments and the Inter-Agency Council Against Trafficking (IACAT) to address cases related to trafficking of children. It requested the Government to continue its efforts to strengthen the capacity of law enforcement agencies in identifying and combating the sale and trafficking of children under 18 years of age.

The Committee notes the Government's information in its report that the Department of Labor and Employment (DOLE) issued Administrative Order No. 551 of 2018 for the Creation of the DOLE Task Force Against Illegal Recruitment, Recruitment of Minor Workers, and Trafficking in Persons to have more focused, concerted, coordinated and effective programmes of action to combat the illegal recruitment and trafficking of children. It also notes the Government's information on the number of orientation and awareness-raising activities undertaken by the DOLE concerning the worst forms of child labour. Moreover, in October 2017, DOLE participated in a workshop conducted by the IACAT and the Australia–Asia Program to Combat Trafficking in Persons on identifying, investigating and prosecuting cases of trafficking of persons for labour exploitation. In April 2017, a Child Protection Compact Partnership (CPC Partnership) was signed by the IACAT and the US Embassy to support Philippines' campaign against trafficking of children. The Committee notes the Government's information in its supplementary report that a total of 123 law enforcement officials were trained under the CPC partnership on various topics including Anti-trafficking in Persons Special Investigations Field Training. According to the Government's report, from September 2017 to September 2019, a total of 44 rescue operations were conducted under the CPC partnership, during which 125 minors were rescued.

The Committee further notes from the Government's report that Republic Act No. 10821 which was adopted in May 2016, provides that upon declaration of a national and local state of calamity, the Philippine National Police, the Department of Social Welfare and Development, with the assistance from the Armed Forces shall immediately heighten comprehensive measures and monitoring to prevent trafficking of children and their exploitation in the areas declared under a state of calamity. Furthermore, the Anti-Trafficking in Persons Act of 2012 was expanded through Republic Act No 10364 entitled "Expanded Anti-Trafficking in Persons Act of 2012", to institute policies to eliminate trafficking in persons especially, women and children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons, and providing penalties for its violation. The Committee notes that according to section 4A of the Expanded Anti-trafficking in Persons Act of 2012, attempted trafficking of persons, where there are acts to initiate the commission of a trafficking offence but the offender failed or did not execute all the elements of the crime, shall be punished. In the case of a child, attempted trafficking involves various acts including facilitating the travel of a child who travels alone to a foreign country without valid reason; required clearance or permit, or a permit from the parents; executing an affidavit of consent or a written consent for adoption; as well as acts to solicit or acquire a child for the purpose of selling.

The Committee, however, notes from the UNICEF 2016 Summary Report on Situation Analysis of Children in the Philippines that domestic and cross-border trafficking of women and children for sexual exploitation continues, with 1,465 victims of trafficking identified and assisted in 2015, and that sex tourism is reportedly on the rise. Furthermore, the Committee notes that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations of October 2016, expressed concern at the persistently high incidence of trafficking in women and children; the very small number of

prosecutions and convictions of traffickers; the insufficient level of understanding of the issues relating to trafficking and the anti-trafficking legal framework among law enforcement officials; and the allegations of complicity of law enforcement officials in the cases related to trafficking of persons (E/C.12/PHL/CO/5–6, paragraph 41). ***While noting the measures taken by the Government, the Committee urges it to intensify its efforts to eliminate in practice the trafficking of children by ensuring that thorough investigations and prosecutions are carried out for persons who engage in the trafficking of children, including state officials suspected of complicity, and that sufficiently effective and dissuasive sanctions are imposed. It requests the Government to pursue its efforts to strengthen the capacity of law enforcement agencies in identifying and combating the sale and trafficking of children under 18 years of age. The Committee further requests the Government to provide information on the number of reported violations, investigations, prosecutions, convictions and penal sanctions imposed in cases related to the trafficking of children as well as for the offences related to attempted trafficking in children under the Extended Anti-trafficking Act of 2012.***

2. *Compulsory recruitment of children for use in armed conflict.* The Committee previously noted the adoption of Executive Order No. 138 on a Comprehensive Programme Framework for Children in Armed Conflict, which calls on the national agencies and local government units affected by armed conflict to integrate the implementation of the Children in Armed Conflict (CIAC) programme framework. The CIAC programme includes developing, strengthening and enhancing policies to promote the protection and prevention of children in armed conflict. It also noted from a report of the United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict of 2016 that the majority of the benchmarks established in the action plan aimed at ending the recruitment and use of child soldiers, which was signed between the United Nations and the Moro Islamic Liberation Front (MILF) in 2009, had been reached and that the Moro Islamic Liberation Front was implementing a four-step process to identify and release all children associated with the military. However, noting from the Report of the Secretary-General on Children and Armed Conflict of April 2016 that children continued to be recruited by armed forces and groups, the Committee urged the Government to intensify its efforts to put an end, in practice, to the forced or compulsory recruitment of children for use in armed conflict, and proceed with the full and immediate demobilization of all children.

The Committee notes the Government's information that in January 2018, the President signed Republic Act No. 11188 on the Special Protection of Children in Situations of Armed Conflict and Providing Penalties for Violations Thereof. This Act requires the State to take all feasible measures to prevent the recruitment, re- recruitment, use, displacement of, or grave violations of the rights of children involved in armed conflict. It notes the Government's information that in order to effectively implement the provisions of Act No. 11188, an Inter-Agency Committee on Children in Situations of Armed Conflict (IAC-CSAC), chaired by the Council for the Welfare of Children (CWC) and comprising representatives from various government organisations, has been created. The functions of the IAC-CSAC include, formulating guidelines and developing programmes in coordination with concerned agencies, for dealing with children involved in armed conflict and monitoring and documenting cases of capture, surrender, arrest, rescue or recovery by government forces. In this regard, the Committee notes the Government's information that the CWC and the IAC-CSAC, in consultation with the UNICEF Philippines and the Philippine Legislators' Committee adopted in June 2019, the Implementing Rules and Regulations (IRR) for the Republic Act No.11188.

The Committee also notes from the 2017 UNICEF report *Children in Armed Conflict: Philippines* that the implementation of the UN–MILF Action Plan ended in July 2017 with the disengagement of nearly 2,000 children from the ranks of the MILF–Bangsamoro Islamic Armed Forces (BIAF). However, the Committee notes that the report of the Secretary-General on children and armed conflict of June 2019, referred to the recruitment and use of 19 children (ten boys and nine girls); 18 by armed groups and one by the armed forces. The United Nations also received additional allegations of recruitment and use of 13 children by the armed groups, such as the New People's Army, Maute Group and the Abu Sayyaf Group. While taking note of the measures taken by the Government, the Committee must express its ***concern*** at the continued use and recruitment of children by armed forces and groups. ***The Committee therefore urges the Government to continue to take the necessary measures to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into the armed forces and armed groups, including through the effective implementation of Republic Act No. 11188 and its Implementing Rules and Regulations. The Committee also urges the Government to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice.***

*Articles 3(b) and 7(2)(a) and (b). Use, procuring or offering of children for the production of pornography or for pornographic performances. Preventing children from being engaged in the worst forms of child labour, removing them from these forms of labour and ensuring their rehabilitation and reintegration. Commercial sexual exploitation of children.* The Committee notes that the Anti-Child Pornography Act of 2009 provides

for the protection of children under 18 years of age from all forms of exploitation and abuse including the use of a child in pornographic performances and materials and the inducement or coercion of a child to engage or be involved in pornography through whatever means (section 2). Section 4 of the Act further prohibits a wide range of offences related to using, hiring, inducing or coercing children for the production of child pornography, and its publication, possession, distribution, and accessing of child pornography while providing for penalties of maximum imprisonment and fines to the perpetrators of such offences (section 14). The Committee noted that according to the UNICEF Summary Report of 2016 on Situation Analysis of Children in the Philippines, cyber violence has emerged as a serious threat and that the new technologies put children at risk of online sexual solicitation and grooming. The number of children coerced, often by relatives, to perform sex acts for live streaming on the internet has increased making online child abuse the leading cybercrime in the country. This report further states that the Philippines is one of the top ten countries globally producing sexual content using children.

The Committee notes the Government's information that an initiative entitled *SaferKidsPH*, spearheaded by the Australian Government and delivered through Save the Children, the Asia Foundation and the UNICEF was launched in October 2019. This initiative aims to create a safer environment for children where the Government and other stakeholders play an active role in: (i) adopting positive behaviour towards protection of children from online abuse and exploitation; (ii) strengthening investigation, prosecution and adjudication of Online Sexual Abuse and Exploitation of Children (OSAEC) cases consistent with national legislation; and (iii) improving service delivery for prevention and protection of children against online sexual abuse and exploitation in OSAEC hotspots. Moreover, a study on online sexual exploitation of children in the Philippines was conducted by the Government in partnership with the International Justice Mission and its findings were presented to the public. The Government report further indicates that in 2018, the Philippine National Police-Anti Cybercrime Group recorded 59 cases of child pornography in 2018 and 11 cases in the first quarter of 2019. In 2018, the Department of Justice Office of Cybercrime recorded 579,006 cyber tips for the online sharing, re-sharing and selling of child sexual images and videos and in 2019, 418,422 such cyber tips were recorded. Moreover, from January to August 2020, a total of seven cases were filed against syndicated crime groups and individual offenders of child pornography who have been arrested and brought to the jurisdiction of the courts.

The Committee further notes that according to a document by the International Organization for Migration, entitled Human Trafficking Snapshot, Philippines, September 2018, indicates that there are tens of thousands of children being exploited and abused in cybersex dens across the Philippines. The Committee notes with ***deep concern*** at the significant number of children who are subject to commercial sexual exploitation in the Philippines and the low number of prosecutions and convictions in this regard. ***The Committee therefore urges the Government to take the necessary measures to ensure the effective enforcement of the Anti-Child Pornography Act, by ensuring that thorough investigations and prosecutions of persons who use children in the production of pornography and in pornographic performances are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It also urges the Government to take immediate and effective time-bound measures to prevent the engagement of children in commercial sexual exploitation as well as to remove those who are victims of such forms of child labour and to provide for their rehabilitation and social reintegration. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

*Articles 3(d), 4(1) and 7(2)(b). Hazardous work and time-bound measures to provide direct assistance for their removal and rehabilitation and social integration. Child domestic workers.* In its previous comments, the Committee noted the International Trade Union Confederation's (ITUC) allegations that there were at least 1 million children under the age of 18 years in domestic work, some of whom were subject to slavery-like practices or working in harmful and hazardous conditions, while some of them, especially girls, suffered physical, psychological and sexual abuses and injuries. In this regard, the Committee noted the adoption of Republic Act No. 10361 which provides for instituting policies for the protection and welfare of domestic workers as well as setting the minimum age for employment in domestic work at 15 years. It also noted that a road map for the elimination of child labour in domestic work and the provision of adequate protection for young domestic workers of legal working age was adopted and a Joint Memorandum Circular (JMC) on the Protocol on the Rescue and Rehabilitation of Abused *Kasambahay* (domestic workers) was signed by the DOLE, the Department of Social Welfare and Development, the National Bureau of Investigation and the Philippine National Police. The Committee urged the Government to strengthen its efforts to ensure the effective implementation of Republic Act No. 10361, to provide information on the implementation of the road map for the elimination of child labour in domestic work as well as the measures taken to rescue and rehabilitate abused domestic workers following the JMC on the Protocol on the Rescue and Rehabilitation of Abused *Kasambahay*.

The Committee notes the Government's information that in July 2017, the DOLE issued an Administrative Order which provides for guidelines for the effective enforcement of the rights of domestic workers under Republic Act No.10361 as well as on the terms and conditions of employment of children under Republic Act No.9231. It also notes the Government's information that DOLE, with support from

ILO, conducted training for 35 DOLE personnel to enhance their capacity in detecting and assessing child labour incidents. In 2017, the Bureau of Workers with Special Concerns (BWSC) conducted capacity enhancement training for regional *kasambahay* focal persons in addressing the vulnerability of domestic workers. However, the Committee notes from the 2018 ILO document on Social Dialogue to Achieve Sustainable Development Goals: Formalising the Informal Economy, Country Brief, Philippines that domestic work is the largest single source of wage employment for women as well as for young workers. ***The Committee therefore strongly encourages the Government to strengthen its efforts to prevent children under 18 years from engaging in hazardous working conditions in domestic work, including through the effective implementation of the road map for the elimination of child labour. It requests the Government to provide information on the measures taken in this regard as well as on the results achieved in terms of the number of child domestic workers who have been protected or withdrawn from child labour and rehabilitated. It also urges the Government to strengthen its efforts to ensure that Republic Act No. 10361 is effectively applied and that sufficiently effective and dissuasive penalties are imposed in practice on persons who subject children under 18 years of age to domestic work in hazardous or exploitative conditions.***

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

## Russian Federation

### Minimum Age Convention, 1973 (No. 138) (ratification: 1979)

*Article 2(1) of the Convention. Scope of application and labour inspectorate. Children working in the informal economy.* In its previous comments, the Committee noted that section 63(1) of the Labour Code prohibits children under 16 years of age from signing an employment contract. It also noted the Government's statement that the illegal employment of minors and the violation of their labour rights were frequent occurrences in the informal economy. Following its repeated requests since 2003, the Committee urged the Government to take the necessary measures to ensure that all children under 16 years of age, including those who work on their own account or in the informal economy, benefit from the protection afforded by the Convention.

The Committee notes with ***concern*** that, according to the Government's indication in its report, no information is available on measures taken regarding the protection of children under 16 years old in the informal economy. The Committee also notes that the Committee on Economic, Social and Cultural Rights expressed its concern at widespread informal employment in the Russian Federation in its concluding observations of 2017 (E/C.12/RUS/CO/6, paragraph 32). The Committee recalls that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not there is a contractual employment relationship, and whether or not the employment or work is paid. In this regard, the Committee is of the view that the expansion of the relevant monitoring mechanisms to the informal economy can be an important manner in which to ensure that the Convention is applied in practice, particularly in countries where expanding the scope of the implementing legislation to address children working in this sector does not seem a practicable solution (2012 General Survey on the fundamental Conventions, paragraph 345). ***The Committee once again urges the Government to take the necessary measures to ensure that all children under 16 years of age, including those who work on their own account or in the informal economy, benefit from the protection afforded by the Convention. In this regard, the Committee once again requests the Government to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children carrying out economic activities without an employment relationship or in the informal economy. It once again requests the Government to provide information on the specific measures taken in this regard as well as on their implementation.***

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

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted that while child trafficking is prohibited by law (section 127.1 of the Criminal Code), it remains a source of serious concern in practice. In this regard, the Committee requested the Government to pursue its efforts to ensure the elimination of the sale and trafficking of children and young persons under 18 years of age in practice, and requested the Government to provide information on the number of reported violations, investigations, prosecutions, convictions and penalties imposed related to the sale and trafficking of children.

The Committee notes the repeated indication in the Government's report on the criminalization of trafficking in persons by the Criminal Code and the administrative responsibility of legal entities provided by the Code of Administrative offences, as introduced by Federal Act No. 58-FZ of 2013. It also notes the statistical information provided by the Government regarding the cases of trafficking in persons, slave labour and prostitution, which, however, does not reflect the situation of cases involving child victims. The

Committee also notes that, according to the information provided in the Government's report under the Forced Labour Convention, 1930 (No. 29), in March 2018, two members of an organized group were detained at Domodedovo International Airport while transferring money in the amount of 1.5 million Russian rubles (approximately US$19,650) for the sale of a minor for the purpose of further prostitution in the Republic of Turkey. Criminal proceedings were instituted against the participants on the grounds of an offence under article 127.1, paragraph 1, of the Criminal Code. Moreover, in 2018, measures were also taken to combat illegal migration and crimes related to the exploitation of women and children, among others. As a result, 76 cases of exploitation of women and children were detected. ***The Committee thus requests the Government to provide concrete information on specific measures taken in practice by the law enforcement authorities, to ensure that thorough investigations and prosecutions of persons who engage in the sale and trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed. It once again requests the Government to provide information on the number of reported violations, investigations, prosecutions, convictions and penalties imposed related to the sale and trafficking of children.***

*Article 7(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.* The Committee previously noted that the Programme of Cooperation for 2014–18 among the member States of the Commonwealth of Independent States (CIS) contains a set of measures to combat human trafficking and assist victims. The Committee requested the Government to strengthen its efforts to provide for the removal, rehabilitation and social reintegration of child victims of trafficking. It also requested the Government to provide information on the concrete measures taken to provide assistance to child victims of trafficking and the results achieved in terms of the number of children who have been provided with assistance, particularly within the framework of the Programme of Cooperation of the CIS.

The Committee notes the Government's information that Government Decision No. 1272 of 25 October 2018 approved the State Programme to Ensure the Safety of Victims, Witnesses and Other Participants in Criminal Proceedings 2019–23, aimed at ensuring the safety of persons participating in criminal proceedings. The Government also indicates that Act No. 119-FZ of 20 August 2004 on the State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings provides the legislative basis in this regard. However, there is no information on concrete measures to provide direct assistance to victims of worst forms of child labour. ***The Committee once again requests the Government to strengthen its efforts to provide for the removal, rehabilitation and social reintegration of child victims of trafficking. It also requests the Government to provide detailed information on the concrete measures taken to provide assistance to child victims of trafficking and the results achieved in terms of the number of children who have been provided with such assistance***

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

## Saint Vincent and the Grenadines

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Articles 3(d) and 4(1). Hazardous work.* The Committee previously noted that the Employment of Women, Young Persons and Children Act (EWYPC Act), did not contain a general prohibition on the employment of children below 18 years of age in hazardous work, other than the prohibition on night work in any industrial undertaking (section 3(2)) nor a determination of hazardous types of work prohibited to children under 18 years of age.

The Committee notes the Government's indication that consultation with stakeholders to address the issues related to hazardous work by children will be commenced shortly and a draft report will be prepared by the end of 2013. ***The Committee expresses the firm hope that consultations with the stakeholders including the social partners will be held in the near future and legislation relating to the prohibition on hazardous work by children under 18 years of age as well as a regulation determining the types of hazardous work prohibited to children under the age of 18 years will be adopted soon. The Committee requests the Government to provide information on any developments made in this regard.***

*Article 7(1). Penalties.* ***The Committee requests the Government to provide information on the application in practice of the sanctions established in the Trafficking Act of 2011 for the offences related to the sale and trafficking of children and for the use, procuring and offering of children for prostitution and child pornography.***

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

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

## Samoa

### Minimum Age Convention, 1973 (No. 138) (ratification: 2008)

*Article 2(3) of the Convention. Age of completion of compulsory education.* In its previous comments, the Committee noted that section 20 of the Education Act 2009 prohibits arranging for a compulsory school-aged child to engage in street trading or to carry out other work of any kind during school hours. However, the Committee noted that pursuant to section 2 of the Education Act 2009, a compulsory school-aged child is defined as a person between 5 years and 14 years of age, who has not completed the eighth year of school. The Committee noted the Government's statement that the Ministry of Education, Sports and Culture had started consulting with the Office of the Attorney General on the drafting of the revised Education Amendment Bill 2016 in order to raise the age of completion of compulsory schooling to 15 years.

The Committee notes with ***satisfaction*** the adoption of the Education Amendment Act of 2019, which in its section 2, has raised the age of completion of compulsory schooling from 14 years to 16 years of age. The Committee further notes that the minimum age for admission to employment remains 15 years according to section 51(1) of the Labour and Employment Relations Act of 2013 (LER Act of 2013). In this regard, in its 2012 General Survey on fundamental conventions paragraph 370, the Committee indicates that "if the minimum age for admission to work or employment is lower than the school-leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work." ***The Committee therefore encourages the Government to take the necessary measures to raise to 16 the minimum age for admission to employment in order to link it with the age of completion of compulsory schooling in conformity with Article 2(3) of the Convention.***

*Article 3(2). Determination of types of hazardous work.* ***With regard to the list of hazardous types of work prohibited to children under the age of 18 years, the Committee refers to its detailed comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).***

*Article 7(1) and (3). Minimum age for admission to light work and determination of types of light work activities.* In its previous comments, the Committee noted that under section 51(1) of the LER Act of 2013, "a person must not employ a child under the age of 15 years in a place of employment except in safe and light work suited to his or her capacity and subject to such conditions as may be determined by the Chief Executive Officer of the Ministry of Labour". The Committee observed, however, that there appeared to be no lower minimum age for engagement in such light work activities. It further noted the Government's statement that a list of light work was being reviewed for children under the age of 15 in accordance with section 51 of the LER Act of 2013 and would be submitted to the Samoa National Tripartite Forum for endorsement.

The Committee notes the Government's indication concerning the revision of the list of light work under the on-going review of the LER Act of 2013. The Committee, however, observes that section 22 of the Labour and Employment Relations Regulations of 2016 (LER Regulations of 2016) sets out limited working hours for children between 12 and 14 years of age. The Committee recalls that *Article 7(1)* of the Convention provides that national laws or regulations may permit children only from the age of 13 to engage in light work. ***The Committee therefore strongly urges the Government to take the necessary measures to bring section 22 of the Labour and Employment Relations Regulations of 2016 in line with the Convention by permitting employment in light work only by young people who have reached the age of 13 years. The Committee once again expresses the firm hope that the Government will take the necessary measures to regulate light work activities in compliance with Article 7(3) of the Convention. It further requests the Government to provide information on any progress made in this regard.***

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

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2008)

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that section 82 of the Crimes Act 2013, makes it an offence to sell, deliver, exhibit, print, publish, create, produce or distribute any indecent material that depicts a child engaged in sexually explicit conduct. It observed, however, that for the purposes of this section a child is defined as a person under the age of 16 years. The Committee further noted the Government's information that the Ministry of Commerce, Industry and Labour (MCIL), with the technical assistance from the Samoa Technical Facility Project, was carrying out a revision of the national legislation, including the Crimes Act 2013 in order to align the definition of a child with the provisions of the Convention. The Committee requested the Government to take the necessary measures to ensure that the use, procuring or offering of children between the ages of 16 and 18 years for the production of indecent materials is also effectively prohibited.

The Committee notes with ***interest*** the development of the Crimes Amendment Bill 2020, which has revised section 82 of the Crimes Act 2013. The Committee takes note of the Government's indication in its report that the Crimes Amendment Bill will be submitted to the Cabinet for its approval before

consideration by the Parliament. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Crimes Amendment Bill 2020 is adopted, without delay, so that the prohibition under section 82 of the Crimes Act 2013 on the production and distribution of indecent materials depicting children will include children between 16 and 18 years of age. It further requests the Government to provide information on any progress made in this regard.***

*Article 4(1). Determination of hazardous types of work.* In its previous comments, the Committee noted that the Hazardous Work List, which contains a list of types of hazardous work prohibited to children under 18 years, had been approved by the Cabinet in May 2018 and was in the process of being incorporated into the Labour and Employment Relations Regulations. The Committee further noted the Government's information that the list had been reviewed by the National Occupational Safety and Health Task Force and supported by the Samoa National Tripartite Forum. The Government also indicated that the MCIL had included this list in its first National Occupational Safety and Health Framework 2018 to ensure that all stakeholders take ownership in monitoring and reporting of any activities that are in breach of this list.

The Committee takes note of the Government's information that the revised Hazardous Work List is currently pending vetting from the Office of the Attorney General before its submission to the Parliament. The Government also indicates that no cases of hazardous work by children under 18 years have been reported through the National Occupational Safety and Health Framework 2018. ***The Committee once again expresses the firm hope that the Government will take the necessary measures to ensure that the Hazardous Work List will be enacted and enforced, without further delay. The Committee requests the Government to provide information on any progress made in this regard. It also requests the Government to continue to provide information on any cases of hazardous work by children under 18 years that have been reported through the National Occupational Safety and Health Framework.***

*Article 7(2). Effective and time-bound measures. Clause (d). Reaching out to children at special risk. Children working as street vendors.* In its previous comments, the Committee noted various measures taken by the Government to identify and protect children engaged in street vending, including: (i) establishment of a Child Vending Task Force (CVTF), comprised of representatives from the Ministry of Education, Sports and Culture (MESC), the Ministry of Police (MoP), the MCIL, the Office of the Attorney General and the Council of Churches, within the Ministry of Women, Community and Social Development (MWCSD) to address the issues pertaining to children working as street vendors; (ii) initiation of collaborative efforts by the MWCSD and the MoP to monitor and identify exploitation of children in the formal and informal economy, including through regular inspections in the streets of Apia and rural areas; (iii) conducting awareness-raising programmes on the use of children in street vending by the MCIL for employers in Upolu and Savaii, in order to prevent them from employing children under the age of 18 to sell goods and products during school hours; (iv) introduction of the Supporting Children Initiative by the MWCSD in March 2016 for children from vulnerable families, in order to ensure their safety through positive parenting support and providing training and financial assistance to parents for income generation projects; and (v) the initiation of Small Business Youth Incubator for Economic Development which aims to instigate programmes for small businesses and income generation projects for youth, women and vulnerable families. The Committee, however, noted that during the discussion which took place at the 107th Session of the Conference Committee on the Application of Standards in June 2018, concerning the application by Samoa of the Convention, the Employer members expressed their concern about the prevalence of under 15-year olds exploited as street vendors. Moreover, the Worker members indicated that around 38 per cent of child labour in Samoa was performed by under 15-year olds, which called into question the Government's capacity and commitment to address the worst forms of child labour.

The Committee takes note of the Government's indication that various services, such as counselling, school placement, and financial assistance, are provided to vulnerable families under the Supporting Children Initiative. In particular, 68 children working as street vendors from 18 families are covered under the Supporting Children Initiative and 11 out of these 18 families have been removed from the situation of having children with high to low risk of engagement in the worst forms of child labour. The Government further indicates that in 2018-2019, labour inspectors of the MCIL carried out inspections of 171 business entities and detected no cases violating section 51 of the Labour and Employment Relations Act of 2013, which regulates the employment of children. In addition, the MESC has developed the School Governance Framework, according to which school committees will monitor children engaged in street trading. The Committee further notes from the latest Government's report on the Minimum Age Convention, 1973 (No. 138) that particular protection can be provided to child street vendors by the MWCSD through its Care Plan and Child Vending Scheme. The Government further indicates that the draft Interagency Guidelines elaborated by the MWCSD address the issues of child street vending. The Committee also takes note of the information provided by the Government that under the SWEEPS Program, inspectors of the MWCSD, in collaboration with the MoP, conduct monthly inspections to prevent child vending in Apia Town Area during school hours. However, the Government indicates that there are issues regarding the

implementation of this Program due to challenges of multi-agency coordination. ***The Committee once again strongly encourages the Government to continue its efforts to identify and protect children engaged in street trading from the worst forms of child labour. It further requests the Government to provide information on the measures taken and the results achieved in this regard, particularly on the number of child street vendors who have been removed from the worst forms of child labour and provided with assistance.***

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

## Saudi Arabia

### Minimum Age Convention, 1973 (No. 138) (ratification: 2014)

The Committee notes the supplementary information provided by the Government on matters raised in the Direct Request addressed to it, and otherwise reiterates the content of its observation adopted in 2019 and reproduced below.

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* The Committee previously noted that section 162 of the Labour Law and section 34 of its implementing regulation establish that the minimum age for admission to employment or work is 15 years. However, noting that children entered school at the age of 6 and completed the compulsory education at the age of 12, the Committee requested the Government to take the necessary measures to ensure compulsory education up to the minimum age for admission to employment or work of 15 years.

The Committee notes with ***satisfaction*** the adoption of Ministerial Decision No. 14 of 2014 which, read jointly with Ministerial Decision No. 139 of 2004, establishes the age of compulsory education up to 15 years, in line with the minimum age for admission to employment. The Committee also notes that according to the UNESCO Institute for Statistics the net enrolment rate in primary school reached 99.77 per cent in 2018 in comparison to 96.42 per cent in 2014. ***The Committee requests the Government to provide information on the application in practice of Ministerial Decision No. 14 of 2014, including statistical information on the school enrolment and attendance rates in both primary and secondary education.***

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

## Senegal

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, and the Government's reply to these observations.

*Article 3(a) of the Convention. Sale and trafficking of children for economic exploitation and forced labour. Begging. Legislation.* In its previous comments, the Committee noted with concern that, although section 3 of Act No. 2005-06 of 29 April 2005 to combat trafficking in persons and similar practices and to protect victims prohibits the organization for economic gain of begging by others, or the employment, procuring or deception of any person with a view to causing that person to engage in begging, or the exertion of pressure so that the person engages in begging or continues to beg, section 245 of the Penal Code provides that "the act of seeking alms on days, in places and under conditions established by religious traditions does not constitute the act of begging". The Committee observed that a joint reading of these two provisions made it appear that the act of organizing begging by *talibé* children cannot be criminalized, as it does not constitute an act of begging under section 245 of the Penal Code. It therefore urged the Government to intensify its efforts to ensure the adoption of the various draft legal texts intended to prohibit and eliminate begging by *talibé* children, to protect them against sale, trafficking and forced or compulsory labour and to ensure their rehabilitation and social integration. The Committee also took due note of the draft Children's Code and draft regulations of *daaras* (Koranic schools), but observed that they had been under preparation and consultation for several years. It therefore requested the Government to intensify its efforts to ensure the adoption of the various draft legal texts intended to prohibit and eliminate begging by *talibé* children.

The Committee notes with ***deep concern*** the Government's indication that the legislative reform that has been announced is still under way. While reaffirming its commitment to combat any form of forced labour and trafficking in persons, particularly involving children, the Government indicates that the Bill establishing the status of *daaras* was adopted by the Council of Ministers on 6 June 2018 and is waiting to be passed by the National Assembly. Moreover, the Unit to Combat Trafficking in Persons (CNLTP), following its evaluation of Act No. 2005-06 of 10 May 2005 to combat trafficking in persons and protect victims, has prepared a draft reform which has been submitted for adoption and takes into account technical conformity and effective enforcement. ***In light of the above, the Committee expects that the Government will be able to report without delay on the adoption of the various draft texts intended to prohibit and eliminate begging by talibé children and to protect them against sale and trafficking or forced or compulsory labour. The Committee requests the Government to provide information on the progress achieved in this regard.***

*Article 7(1). Penalties and application in practice.* In its previous comments, the Committee noted that the number of *talibé* children compelled to engage in begging, most of whom are boys aged between 4 and 12

years, was estimated at 50,000. It expressed its deep concern at the persistence of the phenomenon of the economic exploitation of *talibé* children and the low number of prosecutions under section 3 of Act No. 2005-06 and urged the Government to take the necessary measures to ensure the enforcement of this provision in practice. Furthermore, it noted with regret the absence of data on the number of prosecutions, convictions and penalties imposed under the terms of Act No. 2005-06 and requested the Government to provide such data.

The Committee notes the indication by the ITUC that in 2019 it is estimated that in Senegal over 100,000 *talibé* children are compelled to engage in begging. In Dakar alone, almost 30,000 children are compelled to engage in begging. A study undertaken in 2017 identified over 14,800 child victims of forced begging in Saint-Louis and revealed that 187 of the 197 *daaras* in the city send children to beg for at least part of the day. A total of 1,547 children, of whom 1,089 were *talibé*, were removed from the streets of Dakar between June 2016 and March 2017 during the first phase of the "removal" programme. However, of the children reported to have been "removed", 1,006 were returned to the supervision of their Koranic masters, who had themselves subjected them to forced begging, and who in turn sent them back to the *daaras*. The number of children engaged in begging in Dakar only decreased during the first month of the programme, as the Koranic masters feared possible sanctions. After a few months, faced with the failure of the investigation and the prosecution of the offending masters, the situation returned to the status quo. Although the second phase of the programme is not repeating certain of the errors of the first phase and guarantees the return of the children to their parents, the programme is not managing to ensure that justice is applied against the Koranic masters who forced the children to beg. The ITUC indicates that, despite the generalized and visible nature of the abuses, investigations and prosecutions are extremely rare. No Koranic master has been subjected to the investigation by the police of his *daara*, had his case referred to the judicial system, been arrested or prosecuted for having forced *talibé* children to engage in begging during the first year of the "removal" programme. The police still frequently fail to investigate cases of forced begging. Another persistent practice is to prosecute Koranic masters for less serious offences envisaged by other laws, instead of prosecuting them for the exploitation of *talibé* children under the terms of Act No. 2005-06 or the Penal Code. According to the ITUC's observations, in 2018 and 2019, three Koranic masters were convicted of forcing children to beg under Act No. 2005-06. The three masters were convicted, respectively, to a suspended sentence of two years of imprisonment, two years of imprisonment and three years of imprisonment. When the authorities have identified a potential case of forced begging, they have often issued administrative sanctions for those presumed responsible, instead of conducting an investigation and taking criminal action.

In its reply to the ITUC's comments, the Government states that, to face the challenge of law enforcement, the ministry in charge of child protection has incorporated advocacy activities for judicial chain actors into its communication activities for the repression of perpetrators of crimes against children.

The Committee notes the Government's indication in its report that an operation entitled "Epervier", in which national actors participated, was organized from 6 to 10 November 2017 by Interpol in several countries in the subregion, including Senegal. According to the Government, several prosecutions and convictions were noted in the annual report of the Unit to Combat Trafficking in Persons (CNLTP) and in the study evaluating the implementation of the Act. Two judicial investigations against four persons, opened in March 2017, and a procedure against another person are currently ongoing. Nevertheless, the Committee notes that, according to the report submitted by the Government to the Human Rights Committee in August 2018, during the period 2009–16, only one case resulted in 2011 in a conviction for incitement to begging, violence and assault, as envisaged and penalized by section 3 of Act No. 2005-06 (CCPR/C/SEN/5, paragraphs 110–113). It also notes that, in its concluding observations of 30 January 2019, the United Nations Committee Against Torture expressed concern that, despite the efforts announced by the Government to remove from the streets *talibé* children who attend Koranic schools *(daaras)*, there are still reports that the exploitation of children by Koranic teachers for forced begging is a phenomenon that, far from declining, actually increased over the reporting period and that these children continue to be subjected to trafficking, forced begging and extreme forms of abuse and neglect by the persons responsible for their care *(marabouts)*. The Committee Against Torture also expressed concern at reports of the connivance of the authorities in relation to this phenomenon and their failure to prosecute abusive *marabouts*, except in cases of deaths or extreme abuse of children. It encouraged the State to enhance the application of national laws and conduct impartial and thorough investigations into acts of trafficking, ill-treatment and sexual abuse of children in Koranic schools and other schools, and ensure that those responsible, including state agents who do not investigate such allegations, are prosecuted and, if convicted, punished with appropriate sanctions (CAT/C/SEN/CO/4, paragraphs 31–32). The Committee ***deeply deplores*** the persistence of the phenomenon of the economic exploitation of *talibé* children and the low number of prosecutions under section 3 of Act No. 2005-06. It recalls once again that, under the terms of *Article 7(1)* of the Convention, the Government shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the application of sufficiently effective and dissuasive penal sanctions. ***The Committee therefore urges the Government to take the necessary measures without delay to ensure the enforcement in practice of section 3 of Act No. 2005-06 to persons who make use of begging by talibé children under 18 years of age for the purposes of economic exploitation. Noting the weak impact of the measures adopted, the Committee once again requests the Government to intensify its efforts for the effective reinforcement of the capacities of the officials responsible for the enforcement of the legislation and to ensure that those responsible for these acts, as well as complicit state officials who fail to investigate such allegations, are prosecuted and that sufficiently dissuasive penalties are imposed in practice on those convicted. Noting with deep regret the absence of data on this subject, the Committee once again requests the Government to provide statistics on the number of prosecutions initiated, convictions handed down and penalties imposed under Act No. 2005-06.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and the provision of assistance to remove them from these forms of child labour. Talibé children.* The Committee previously noted the various programmes for the modernization of *daaras* and the training of teachers, as well as the various framework plans for the elimination of the worst forms of child labour. It requested the Government to take measures to protect *talibé* children against sale and trafficking and forced or compulsory labour; to ensure their rehabilitation and social integration; to provide information on the measures taken for this purpose within the framework of the support project to modernize *daaras* (PAMOD), and to provide statistics on the number of *talibé* children who have been removed from the worst forms of child

labour and who have benefited from rehabilitation and social integration measures in the Care, Information and Counselling Centre for Children in Difficulties (the GINDDI Centre).

The Committee notes the ITUC's observation that the implementation of the PAMOD has been extremely slow. The national system for the regulation of *daaras* cannot be established until the Act regulating *daaras* has been adopted. In the meantime, the Inspectorate of *daaras* appears to be without clear directives and instructions concerning its role and does not appear to be preparing plans to combat begging and ill-treatment of children in *daaras*. It is also difficult to know whether the Inspectorate intends to inspect all *daaras*, or only those registered as "modern" *daaras*, thereby creating a risk that unregistered *daaras* may continue to operate without any controls. The Committee notes that, according to the ITUC, the number of *talibé* children who are victims of forced begging and other serious forms of abuse by their Koranic masters in 2017 and 2018 continued to be alarming. The reported forms of abuse include murder, beatings, sexual abuse, the children being chained up and imprisoned, as well as many forms of negligence and dangerous situations, which occurred in at least eight of the 14 administrative regions of Senegal. One report documents the death of 16 *talibé* children who were victims of abuse, negligence and dangerous situations in which they were placed by Koranic teachers and their assistants in the regions of Saint-Louis, Diourbel and Thiès between 2017 and 2018. Moreover, there were 61 cases of the beating or physical ill-treatment of *talibé* children by Koranic masters or their assistants and 14 cases of children who were imprisoned, bound up or chained in *daaras* in 2017 and 2018. Many *daaras* enclose between tens and hundreds of *talibé* children under conditions of dirt and extreme poverty, often in incomplete buildings without walls, floors or windows. The air and ground are full of rubbish, sewage and flies and the children sleep in a single room in their dozens, or outside, often without mosquito nets. Up to now, the programme for the modernization of *daaras* appears to have focused more on the construction of new "modern" *daaras* than on the improvement of the infrastructure and practices in existing *daaras*.

In this connection, the Committee notes the Government's indication that several initiatives have been undertaken with development partners for the construction and equipment of 64 modern *daaras*, of which 32 are not public, and the provision of subsidies to 100 owners of *daaras*. An amount of 3,750 billion CFA francs had been mobilized for the financing of a pilot initiative for the modernization of *daaras*, including training in administrative management and education of 32 directors of non-public *daaras* under the PAMOD in March 2016, as well as the training of 224 Koranic masters, 160 Arab language teachers and 160 French language teachers for non-public *daaras*, starting on 14 July 2016. Furthermore, in response to the ITUC's observations, the Government indicates that the implementation of the PAMOD, which is due in December 2019, led to the construction of 15 modern *daaras* and the recruitment of their directors. Steps are also being taken to enrol *talibé* in the Universal Health Coverage Programme (CMU/*Talibés*). In addition, with a view to ending the exploitation of child begging, the Ministry for the Protection of Children has initiated consultations with all stakeholders to strengthen the partnership framework for the implementation of a national action plan for the eradication of child begging.

However, the Committee notes that, in its concluding observations of 13 November 2019, the United Nations Committee on Economic, Social and Cultural Rights expresses deep concern at the persistence of the current practice in certain Koranic schools directed by *marabouts* of using children for economic purposes, which also prevents them from having access to health, education and good living conditions (E/C.12/SEN/CO/3, paragraph 26). The Committee notes with ***deep concern*** the situation of *talibé* children who are victims of forced begging and other serious forms of abuse by their Koranic masters. ***In this context, the Committee urges the Government to intensify its efforts and to take the necessary measures without delay to protect talibé children against sale and trafficking and forced or compulsory labour and to ensure their rehabilitation and social integration. Please provide information on the measures adopted, including within the context of the Programme to Improve Quality, Equity and Transparency in Education and Training (PAQUET) and the PAMOD with a view to the modernization to the system of daaras. The Committee expresses the firm hope that the Government will be in a position to provide statistics in its next report on the number of talibé children who have been removed from the worst forms of child labour and who have benefited from rehabilitation and social integration measures.***

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

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

## Seychelles

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes the observations made by the General Employer Trade Union of Seychelles (GETUS) received on 5 September 2019.

*Article 3(1) and (2) of the Convention. Minimum age for admission to, and determination of, types of hazardous work.* ***With regard to the adoption of the list of hazardous work, the Committee refers to its comments under Articles 3(d) and 4(1) of the Worst Forms of Child Labour Convention, 1999 (No. 182).***

*Article 3(3). Hazardous work as from 16 years.* In its previous comments, the Committee noted that pursuant to section 22(4) of the Conditions of Employment Regulations, the competent officer may, exceptionally, grant special written permission for the employment of children aged 15 to 17 years in the circumstances listed in section 22(1) and (2), and requested the Government to amend the legislation to bring it into conformity with the requirements of *Article 3* of the Convention.

The Committee notes the Government's reiterated reference to proposed legislative amendments to authorize only children from 16 years and above to take up hazardous work on condition that the health, safety and morals of such children are protected. It also notes the Government's indication that the necessary measures to have these proposals adopted are expected in the near future. In this respect, the

Committee notes the observations made by the GETUS according to which hazardous types of work should be prohibited for children under 18 years in all circumstances. The Committee recalls that, by virtue of *Article 3(3)* of the Convention, only persons from the age of 16 years may be authorized to take up employment or to perform work referred to under *Article 3(1)*, after consultation with the organizations of employers and workers concerned, and on condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. ***In light of the fact that the Committee has been raising this issue since 2004, the Committee urges the Government to take the necessary measures to ensure that the necessary legislative amendments are adopted in the very near future.***

*Article 7(1) and (3). Minimum age for light work and determination of light work activities.* In its previous comments, the Committee noted that under section 21 of the Conditions of Employment Regulations, children under 15 years of age are prohibited from engaging in any kind of work, including in light work. It further noted that proposals to include provisions permitting the employment of children between 13 and 15 years of age in light work would be considered upon further discussion. In this respect, the Committee recalled that, by virtue of *Article 7(3)* of the Convention, the competent authority shall determine the activities in which employment or work may be permitted for children 13–15 years of age. In addition, the number of hours during which, and the conditions in which, light work activities may be undertaken must be prescribed.

The Committee notes the Government's indication, in response to its request, that the introduction of light work for children aged 13 and 14 years will be subject to the conditions as approved by the competent officer, will only be permitted during school holidays and that a list of accepted light work activities will be developed. In this respect, the Committee also notes the Government's reference to relevant provisions in the 2017 Employment Bill. ***In light of the fact that the Committee has been raising this issue since 2004, the Committee expresses the firm hope that the draft Bill containing provisions permitting the employment of children between 13 and 15 years of age in light work will be adopted in the near future. It also requests the Government to ensure that the draft Bill contains provisions regulating light work in conformity with Article 7(3) of the Convention.***

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

The Committee notes the observations made by the Seychelles Federation of Workers' Unions (SFWU) received on 6 September 2019.

*Articles 3 and 7(1) of the Convention. Worst forms of child labour, penalties and application in practice. Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously expressed its deep concern at children under 18 years of age being potentially engaged in prostitution, particularly sex tourism, based on the indications in the 2014 mission report of the United Nations Special Rapporteur on trafficking in persons, especially women and children (A/HRC/26/37/Add.7, paragraphs 10 and 11). That report also referred to a number of factors hampering the effective and swift investigation and prosecution of trafficking cases, including the lack of comprehensive understanding of the relevant penal provisions by police officials (paragraphs 46 and 47).

The Committee notes the Government's indication in its report, in response to the Committee's request that four alleged cases of child prostitution were reported, one of which is under examination and three of which were transmitted for prosecution and subsequently brought to the Supreme Court. The Government adds that in some alleged cases of child prostitution, the supposed victims refuse to have the police investigate the matter. In this respect, the Committee also notes that the 2018 concluding observations of the United Nations Committee on the Rights of the Child (CRC) refer to the vulnerability of children to commercial sexual exploitation, internal sexual trafficking in the context of the flourishing tourism industry, and reported cases of forced prostitution by family members to sustain the family income (CRC/C/SYC/CO/5-6, paragraph 24). It further notes that the CRC recommends, among other things, that: (i) research be undertaken on the nature and extent of the commercial sexual exploitation of children; (ii) specific training be provided to judiciary and law enforcement officials; and (iii) accessible, confidential and child-friendly channels for the reporting of such violations be provided (paragraph 25). The Committee notes that the Government has not provided the requested information in its report on the progress made with the data collection on children involved in the worst forms of child labour. ***In light of the above, the Committee urges the Government to take the necessary measures to ensure that persons suspected of using, procuring, or offering children for prostitution are identified, and that thorough investigations and prosecutions are carried out in this respect, and to provide statistical information on the number and nature of violations reported, investigations and prosecutions undertaken. In this respect, the Committee asks the Government to provide information on the outcome of the four reported cases of child prostitution, three of which have been transmitted for prosecution and brought to the Supreme Court, including convictions and criminal penalties imposed. The Committee also once again requests the Government to take the necessary measures to ensure that sufficient data on the involvement of children in the worst forms of child labour, particularly in commercial sexual exploitation, are available.***

*Articles 3(d) and 4(1). Worst forms of child labour. Hazardous work and determination of hazardous work.* Following up on its previous requests made in this respect, the Committee notes the Government's reiterated indication that proposals to include the draft list of hazardous types of work in the Conditions of Employment Regulations have been made and that the necessary measures to have them adopted are expected in the very near future. In this respect, the Committee also notes the observations made by the SFWU that there is a need for the Government to continue with its commitment to reviewing certain provisions of national laws to bring it into conformity with the provisions of the child labour Conventions. ***In light of the fact that the Committee has been raising this issue since 2004, the Committee urges the Government to follow up on its reiterated commitment and take the necessary measures to ensure that the Conditions of Employment Regulations are amended and that the draft list of hazardous types of work as prohibited for children under 18 years of age is adopted in the very near future.***

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

## Sierra Leone

### Minimum Age Convention, 1973 (No. 138) (ratification: 2011)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 2(1) of the Convention. Scope of application.* The Committee previously noted that, according to section 129 of the Child Rights Act of 2007 (Child Rights Act), the provisions related to the employment of children apply to employment in the formal and informal economies. However, according to sections 52 and 53 of the Employers and Employed Act of 1960, children under the age of 15 years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof or on any vessel, other than an undertaking or vessel in which only members of the same family are employed.

The Committee notes the absence of information in the Government's report in this regard. ***Noting the discrepancies on the application of the minimum age provisions, the Committee once again requests the Government to take the necessary measures to harmonize the provisions of the Employers and Employed Act with the Child Rights Act, so as to ensure that children working in all branches of economic activity, including family undertakings, also benefit from the protection laid down in the Convention.***

*Article 3(2). Determination of the types of hazardous work.* The Committee previously noted that, according to section 128(3) of the Child Rights Act, hazardous types of work prohibited to children under 18 years of age include: going to sea; mining and quarrying; porterage of heavy loads; manufacturing industries where chemicals are produced or used; work in places where machines are used; and work in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behaviour. It also noted that section 126 of the Child Rights Act and section 48 of the Employers and Employed Act prohibit night work of persons under the age of 18 years. The Committee further noted the Government's indication that the Ministry of Labour and Social Security (MLSS) had developed a list of types of hazardous work prohibited to children under 18 years of age after consultations with the social partners, child protection agencies and civil society organizations. This list of hazardous types of work had been validated and was awaiting Cabinet approval as a *Statutory Supplementary Instrument.*

The Committee notes the Government's information in its report that the list of hazardous types of work is still awaiting Cabinet approval. ***The Committee once again expresses the firm hope that the Government will take the necessary measures to ensure that the list of types of hazardous work prohibited to children under the age of 18 years is adopted in the near future. It requests that the Government provide information on any progress made in this regard.***

*Article 3(3). Admission to hazardous types of work from the age of 16 years.* The Committee previously noted that section 54(2) of the Employers and Employed Act permits underground work in mines of male persons who have attained the age of 16 years with a medical certificate attesting fitness for such work. However, there appear to be no provisions which establish the requirement to ascertain that young persons between the ages of 16 and 18 years engaged in hazardous work receive adequate specific instruction or vocational training in the relevant branch of activity as required by *Article 3(3)* of the Convention.

The Committee notes the absence of information on this point. The Committee once again reminds the Government that according to *Article 3(3)* of the Convention, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years, on condition that the young persons receive adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee therefore once again requests that the Government take the necessary measures to ensure compliance with the conditions set out in Article 3(3) of the Convention.***

*Labour inspectorate.* The Committee previously noted that according to the provisions of section 132 of the Child Rights Act, a district labour officer shall carry out an inquiry he may consider necessary in order to satisfy himself that the provisions of Part VIII of the Act dealing with the employment of children and young persons in the formal economy are being strictly observed. For the purposes of this section, any person may be interrogated by the district labour officer. Furthermore, if a district labour officer is reasonably satisfied that the provisions of this Part are not being complied with, they shall report the matter to the police who shall investigate the matter and take the appropriate steps to prosecute the offender. The Committee also noted that similar provisions are laid down under section 133 of the Child Rights Act with regard to the enforcement of the provisions related to the employment of children in the informal economy by the District Council. The Committee also noted the Government's information that the Child Labour Unit established within the MLSS was also mandated to monitor child labour in workplaces. The Government's report further indicated that the inspections carried out in the formal sector revealed the non-existence of child labour; however, only limited inspections were carried out in the informal economy and therefore no relevant data on child labour in this sector was

available. Moreover, the Government stated in its report that the labour inspectors, investigators and other key enforcement agencies were still operating on old legislation and that they lacked proper training on child labour monitoring.

The Committee notes that, in its comments of 2013 under the Labour Inspection Convention, 1947 (No. 81), the Committee had noted that the labour inspectorate in Sierra Leone was practically inoperative. ***The Committee therefore once again requests that the Government take the necessary measures to strengthen the functioning of the labour inspectorate to ensure the effective monitoring of children working in the formal and informal economy. The Committee also once again requests the Government to provide information on the functioning of the Child Labour Units with regard to the child labour inspections carried out and on the number and nature of violations detected.***

*Application of the Convention in practice.* The Committee previously noted that the data released by the ILO on 12 June 2008 indicated that more than half of all the children between the ages of 7 and 14 years were child labourers. While noting the measures taken by the Government, the Committee expressed its concern at the high number of children below the legal minimum age who were engaged in child labour in Sierra Leone. The Committee also noted from the project report of the ILO–IPEC project entitled "Tackle Child Labour through Education" (TACKLE project) that the TACKLE project and the Statistical Information and Monitoring Programme on Child Labour (SIMPOC) conducted a National Child Labour Survey in 2010–11 in Sierra Leone, the report of which had not yet been published.

The Committee notes that the Government provided results of the National Child Labour Survey 2011 in its written replies to the list of issues in relation to the combined third to fifth periodic reports to the Committee on the Rights of the Child (CRC) of September 2016 (CRC/C/SLE/Q/3-5/Add.1, Annex II), according to which, 45.9 per cent of children aged 5–17 year of age were involved in child labour. Particularly, 31 per cent of children between 5 and 14 years of age were engaged in child labour, while 22 per cent of children between 5 and 17 years of age were involved in hazardous work. The Committee further notes that, according to the State of the World's Children 2014 (UNICEF), more than a quarter (26 per cent) of children aged 5–17 years were involved in hazardous work. The Committee expresses its ***deep concern*** at the large number of children involved in child labour and hazardous work. ***It urges the Government to pursue its efforts to prevent and eliminate child labour within the country. It also requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons.***

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

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

## Somalia

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2014)

The Committee notes the Government's first report and the observations of the Federation of Somali Trade Unions (FESTU) received on 1 September 2018.

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or practices similar to slavery. Forced or compulsory recruitment of children for use in armed conflict.* The Government indicates in its report that article 29 of the Provisional Constitution of 2012 provides for the right of children to be protected from armed conflict and not to be used in armed conflict (paragraph 6). In addition, it indicates that the Somali National Army issued a general staff Order (No. 1), stating that children under 18 years of age may not enlist in the army.

The Committee notes that the draft Labour Code of 2019 provides, in its section 7 entitled "Slavery and forced labour and recruitment of children into the armed forces", for the prohibition of forced or compulsory recruitment of children for use in armed conflict, which is considered as a form of forced or compulsory labour. The penalty for offenders under this provision is a fine or imprisonment for a term of not less than three years and not exceeding ten years, or to both a fine and imprisonment.

According to the Government, the Somali National Army has benefited from human rights training and continuous sensitization to combat the use of children in armed conflict. However, the Government states that gaps exist in law enforcement areas to adequately protect children from the worst forms of child labour, especially in parts of the country that the Government does not control. It indicates the detection of cases of recruitment of children by non-state armed groups, including for use as spies, when opening and closing checkpoints, and to join their armed groups. In 2017, Al-Shabaab extremists intensified its campaign of forced recruitment of children as young as 8 years old. According to the Social Protection Policy of 2019, the recruitment of children by armed groups has included the threatening of elders, teachers in Islamic religious schools, and communities in rural areas with attacks if they did not provide thousands of children as young as 8 years old for use in armed conflict. The observations of the Federation of Somali Trade Unions (FESTU) received on 1 September 2018 also stated that children were forcibly recruited and used by militias and Al-Shabaab extremists as soldiers.

The Committee notes that, according to the Report of the UN Secretary-General on Children and armed conflict of June 2020, the recruitment and use in armed conflict of 1,442 boys and 53 girls were verified in 2019, with some children as young as 8 years old. Al-Shabaab remained the main perpetrator but government security forces, regional forces and clan militias also recruited and used children. A total of 1,158 cases of abduction of children were verified, mainly for the purpose of recruitment and use in

armed conflict, as well as 703 cases of children killed or maimed, and more than 200 cases of girls being raped and are victims of sexual violence. The Secretary General underlined the growing number of violations attributed to government security forces (A/74/845-S/2020/525, paragraphs 137, 139, 140, 142 and 145). Moreover, the Committee notes that, in her report of 24 December 2019, the Special Representative of the Secretary-General for Children and Armed Conflict specified that in Somalia, where the highest figures for sexual violence were verified in 2019, girls were sexually abused during their association with armed forces and groups, and forcibly married to combatants. She also stated that abduction was the primary way for Al-Shabaab to forcibly recruit children for use as combatants in Somalia (A/HRC/43/38, paragraphs 27 and 32). The Committee must ***deplore*** the continued recruitment and use of children in armed conflict in Somalia, especially as it entails other violations of children's rights, such as abductions, killings and sexual violence. ***While recognizing the complexity of the situation prevailing on the ground and the existence of an armed conflict and armed groups in the country, the Committee urges the Government to take the necessary measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age by armed forces and armed groups in Somalia. The Committee also urges the Government to take immediate and effective measures to ensure the thorough investigation and prosecution of all persons found guilty of recruiting children under 18 years of age for use in armed conflict and to ensure that sufficiently effective and dissuasive penalties are imposed in practice. The Committee requests the Government to provide information on the number and nature of investigations carried out against the perpetrators of these crimes, as well as on the number of prosecutions conducted, and the number and nature of penalties imposed.***

*Articles 6 and 7(2)(a) and (b). Programmes of action and effective time-bound measures for prevention, assistance and removal. Children forcibly recruited for use in armed conflict.* The Government indicates that it signed a roadmap to end recruitment and use of children in conflict, in 2019.

The Committee notes that, in its report of March 2020 on Children and armed conflict in Somalia, the UN Secretary-General specified that this roadmap, aiming at accelerating the implementation of the action plans of 2012 on preventing and combating the recruitment and use and the killing and maiming of children, includes renewed commitments to strengthening the legislative framework, to capacity-building and awareness-raising for security forces, and to the screening of troops. The roadmap also provides for the creation of regional working groups on children and armed conflict, in order to implement the action plans at the Federal member State-level (S/2020/174, paragraphs 65 and 69). The Committee notes that the United Nations Assistance Mission in Somalia (UNSOM) specified that the roadmap to end recruitment and use of children in conflict details measures to release children associated with armed forces, and reintegrate them into their communities.

The Committee further notes that the UN Secretary-General indicated in its report of March 2020 that the Government was drafting a national strategy aimed at preventing child recruitment and facilitating the release and reintegration of children associated with armed groups, and a national strategy on assistance to victims aiming at supporting survivors of armed conflict, including children affected by conflict (S/2020/174, paragraph 67).

According to the report of the Government to the Committee on the Rights of the Child of October 2019, the National Programme for the Treatment and Handling of Disengaged Fighters focuses on outreach, reception, screening, rehabilitation and reintegration of children previously engaged in conflict (CRC/C/SOM/1, paragraph 362). However, according to the Report of the Secretary-General on Children and armed conflict of June 2020, 236 children were detained in 2019 for alleged association with armed groups by national and regional security forces (A/74/845-S/2020/525, paragraph 138). ***The Committee urges the Government to take the necessary measures to ensure that children removed from armed forces or groups are treated as victims rather than offenders. It also requests the Government to provide information on the adoption and implementation of the above-mentioned national strategies to prevent child recruitment, facilitate the release and social reintegration of children associated with armed groups, and assist them, including any special attention that has been paid to the removal, rehabilitation and social integration of girls. Furthermore, the Committee requests the Government to provide information on the manner in which the National Programme for the Treatment and Handling of Disengaged Fighters has been applied to children recruited in armed groups and the armed forces.***

*Article 7(2). Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education*. The Government indicates that the restoration of free education is one of its priorities. It has provided opportunities for free schooling in some regions, adding that 22 free schools have been established in the country. The Government wishes to implement programmes to enable more children to return to school.

The Committee notes that, according to the Social Protection Policy, there are low school enrolment rates throughout the country, and girls' enrolment rates are significantly lower. Almost 47 per cent of children from 6 to 17 years of age are not enrolled in school. In 2015, the primary school net attendance rate was estimated at 21 per cent for girls and 30 per cent for boys (page 7). The Federal Government of

Somalia, together with the World Food Programme, is implementing a school feeding programme covering more than 20 per cent of primary schools across the country. In the Federal member States, school feeding is carried out in partnership with the Ministry of Education (page 15). It improves children's school attendance and food security (page 34).

The Committee also notes that the National Employment Policy of 2019 states that the National Education Policy and the National Education Sector Strategy Plan are essential in revising the education system, which was completely destroyed by the conflict (page 7). The National Employment Policy indicates that the private sector is the largest provider for education (page 10).

The Committee further notes that the report of the World Bank Group of August 2019 underlines that Somalia's allocations to education as share of the national budget are about 1 per cent. The Federal member States also spend little of their own resources on education (page 32).

In its report on Children and armed conflict of June 2020, the UN Secretary-General stated that, with 64 attacks on school in 2019, Somalia has one of the highest numbers of attacks of school. Incidents included the abduction of teachers and pupils, the killing of and threats against teachers, and the destruction and looting of facilities (A/74/845-S/2020/525, paragraph 141). ***Considering that education is key in preventing children from the worst forms of child labour, the Committee strongly encourages the Government to continue to take the necessary measures to improve access to free basic education of all children, including girls. It requests the Government to continue to provide information on the progress made regarding access to free basic education, including on the implementation of the National Education Policy and the National Education Sector Strategy Plan. The Committee also requests the Government to provide information on the school enrolment, attendance and completion rates at primary and secondary level, as well as on the school drop-out rates.***

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

## South Africa

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour and application of the Convention in practice.* The Committee previously noted from the Government's replies to the list of issues raised by the Committee on the Rights of the Child (CRC) of 15 August 2016 that data from the Department of Labour indicated that 784,000 children were involved in economic activities between 2013–16. The CRC expressed its concern in its concluding observations of 30 September 2016 that the activities of some business enterprises, in particular, those of extractive industries, had a negative impact on the enjoyment of the rights of the child, including through the exploitation of child labour (paragraph 17). It also expressed its concern at the persistent wide engagement of children in child labour, in particular in agriculture (paragraph 65). The Committee requested the Government to strengthen its efforts to ensure the progressive elimination of child labour, and to take the necessary measures to ensure that sufficient up-to-date data on the situation of working children is made available.

The Committee notes the Government's information in its report that the National Day Against Child Labour has been commemorated in eight of the nine provinces in order to raise awareness against child labour. It also notes the Government's information in its report under the Worst Forms of Child Labour Convention, 1999 (No.182) that the National Child Labour Programme of Action which is aimed at addressing child labour in the country is being implemented and is now on Phase IV covering 2017-2021. The Committee further notes the Government's information that according to the Survey of Activities of Young People, 2015, (SAYP 2015) of the 11.2 million children between the ages of 7 and 17 years, 577,000 children are involved in child labour, a decrease from 779,000 in 2010. The province of KwaZulu-Natal has the highest rate with about one out of ten children engaged in child labour. Children were mainly involved in production and trade of goods and services, including in private households (52.6 per cent), followed by agriculture (46.9 per cent) and transport services (25.3 per cent). ***While noting the measures taken and positive results achieved in terms of the reduction of child labour, the Committee requests the Government to pursue its efforts to ensure the progressive elimination of child labour in the country. It further requests the Government to provide information on the measures taken in this regard, including the concrete measures taken within the framework of the Child Labour Action Programme 2017-2021, and the results achieved in terms of the number of children withdrawn from child labour.***

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

*Article 5 of the Convention. Monitoring mechanisms and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the Survey of Activities of Young People 2010 (SAYP 2010), exposure to hazardous work was common among children aged 7 to 17 who were engaged in economic activities, which indicated 42.3 per cent among children aged 7–10, 41.8 per cent among children aged 11–14 and 41.3 among children aged 15–17. Moreover, a total of 90,000 children were reported to have been injured in the 12 months preceding SAYP 2010 while doing an economic work

activity. The Committee urged the Government to intensify its efforts to eliminate the worst forms of child labour, in particular hazardous work, including information on the number and nature of infringements reported by the labour inspectorate.

The Committee notes that the Government's report does not provide any information on this point. However, the Committee notes the information provided by the Government under the Labour Inspection Convention, 1947 (No. 81), that the restructuring and professionalization of the labour inspectorate is on-going. This report also indicates that the labour inspectors are provided with extensive trainings on various programmes to develop their competencies and access to a motor vehicle scheme and to a motor vehicle pool has been established. Moreover, various innovative initiatives are being piloted and implemented for an able functioning of the inspectorate, including measures to improve the collection of information and data relating to labour inspection activities.

The Committee notes that according to the findings of the SAYP 2015, 34.2 per cent of the total number of 577,000 children aged 7–17 years who are involved in child labour, work in hazardous conditions, including working in dusty conditions, extreme temperatures or humidity and work in water, lake, river and sea. It also notes that the proportion of children exposed to at least one hazardous working condition decreased from 41.8 per cent in 2010 to 34.2 per cent in 2015. The SAYP report further indicates that 84,000 children were injured in the 12 months preceding the survey indicating a decline from 91,000 in 2010. ***While noting a reduction in the number of children involved in hazardous work, the Committee encourages the Government to continue its efforts, including by strengthening the capacities of the labour inspectorate to ensure that children under the age of 18 years are not engaged in hazardous work. In this regard, the Committee requests the Government to take the necessary measures to promote collaboration between the labour inspectorate and other relevant stakeholders and to provide training to the labour inspectors to detect cases of children engaged in hazardous work. It requests the Government to continue providing information on the measures taken in this regard and on the results achieved.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identify and reach out to children at special risk. Child orphans of HIV/AIDS and other vulnerable children (OVCs).* In its previous comments, the Committee noted that the Department of Social Development (DSD) provides support to OVCs through a basket of services, including food support, home care, drop-in centres and psychosocial support through Home and Community-Based Care (HCBC) workers. However, noting that the number of OVCs due to AIDS aged 0–17 remained high at approximately 2.1 million children (2015 UNAIDS estimates), the Committee urged the Government to strengthen its efforts to ensure the protection of OVCs from the worst forms of child labour and to provide information on the time-bound measures taken in this regard.

The Committee notes the Government's information that in response to the growing number of orphans and vulnerable children due to the HIV/AIDS epidemic, the DSD has partnered with the National Association of Child Care Workers (NACCW) to roll out a five-year intervention programme known as *Isibindi,* which means bravery or courage in isiZulu. *Isibindi* is a community-based child and youth care prevention and early intervention service that provides support to vulnerable children, including through improving the well-being and educational outcomes for children, skills development and creation of job opportunities for young persons which benefitted over one million children. The Committee notes the Government's indication that the *Isibindi*, which is being implemented in 367 sites, has been successful in ensuring that vulnerable children remain in school, particularly children in child-headed families. Furthermore, the Department of Basic Education together with the National Student Financial Aid Scheme is providing financial assistance to vulnerable children for their higher studies and technical and vocational education and training. However, according to the UNAIDS estimates of 2019 for South Africa, the number of child orphans due to AIDS aged under 17 has reached approximately 1.4 million. While noting the measures taken by the Government, the Committee must express its ***concern*** at the high number of children orphaned by HIV/AIDS who are at an increased risk of being engaged in the worst forms of child labour***. The Committee therefore strongly encourages the Government to pursue its efforts to ensure that those children are prevented from being engaged in the worst forms of child labour, in particular by continuing to ensure their access to education and vocational training and providing appropriate assistance and support. The Committee requests the Government to continue to provide information on the concrete measures taken particularly within the framework of the Isibindi initiative, and the results achieved in terms of the number of orphans and vulnerable children withdrawn from the worst forms of child labour and rehabilitated into education or vocational training. To the extent possible, please disaggregate the data provided by gender and age.***

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

# Spain

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year (see *Article 7(2)(a) and (b)* below), as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations made by the General Union of Workers (UGT) in the Government's report, and the Government's reply. The Committee also notes the observations of the Spanish Confederation of Employers' Organizations (CEOE), received on 6 September 2019, and the Government's response.

*Article 7(2) of the Convention. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these types of labour and ensuring their rehabilitation and social integration. Trafficking for sexual and labour exploitation.* The Committee previously encouraged the Government to pursue its efforts to protect young persons under 18 years of age, particularly girls and migrant children, against trafficking for sexual exploitation. It also asked the Government to supply information on the number of migrant children registered in the context of the Protocol on unaccompanied foreign minors.

The Committee notes the observations of the UGT indicating that the Comprehensive Plan to Combat the Trafficking of Women and Girls for Sexual Exploitation does not take account of the situation of male victims or of other forms of labour exploitation. The UGT emphasizes that the immediate consequences are insufficient protection of boys who are victims of trafficking for sexual exploitation, and inadequate protection for women and girls who are victims of other forms of human trafficking. In this regard, the Committee notes the Government's indication that the appendix to the Framework Protocol for the protection of victims of human trafficking concerning action to detect and provide care for child victims of trafficking applies to both girls and boys.

The Committee notes the Government's indication in its report that the information on unaccompanied foreign minors (MENA) and the information on child victims of trafficking and sexual exploitation comes from two different registers. Accordingly, the information from the MENA register includes all unaccompanied migrant children identified in Spain. In April 2019, a total of 12,303 migrant children (11,367 boys and 936 girls) were registered. The data concerning trafficking victims is from the Ministry of the Interior. In 2016, the 148 registered victims included six children; in 2017, nine children were recorded among 155 victims; and in 2018, the 128 trafficking victims included six children. With regard to sexual exploitation, in 2016 three children were registered among 433 cases; in 2017, six children in 422 cases; and in 2018, two children were recorded among 391 cases.

The Committee also notes the statistics provided by the Government relating to children who are victims of trafficking for labour exploitation, begging and criminal activities. In 2016, no cases of trafficking of children for labour exploitation were recorded. In 2017 and 2018, four cases of trafficking of children for labour exploitation were recorded each year. In 2019, the Government indicates that 16 child victims of trafficking for labour exploitation were removed from this worst form of child labour. Between 2016 and 2018, the Government recorded ten cases of children involved in criminal activities and four cases of children used for begging.

The Committee takes due note of the inclusion of a specific provision on persons working with minors, in order to check that there is no previous history of sexual offences against children or trafficking offences for sexual exploitation, in the Bill for the comprehensive protection of children and young persons from violence. The Committee also notes the Government's supplementary information, according to which the Bill amends the reformed text of the Act respecting social offences and penalties (approved by Legislative Decree No. 5/2000 of 4 August) through the introduction of a new offence of employment of persons who have committed sexual crimes against children. In addition, the Government refers to several measures envisaged in the Bill, including: (i) the general obligation to report to the competent authority any situation of violence towards children or young persons; (ii) the establishment of specialized units for awareness raising and the prevention of situations of violence against minors in the national security forces and institutions; and (iii) the preparation of specific action protocols covering trafficking in persons, and the abuse and sexual exploitation of minors living in protection centres. The Bill is being drawn up by the Ministry of Health, Consumer Affairs and Social Welfare, the Ministry of Justice and the Ministry of the Interior. It is intended to achieve Goal 16.2 of the 2030 Sustainable Development Agenda, that is to end abuse, exploitation, trafficking and all forms of violence and torture against children. The Committee notes that in its observations the CEOE emphasizes the importance of the participation of trade unions and occupational associations in this process to ensure progress and substantive changes to the draft legislation, in view of their knowledge of the social and economic situation in Spain.

The Committee also notes the amendments to sections 177bis(6) and 192(3) of the Penal Code prohibiting any person who has committed sexual crimes against children or the trafficking of persons for sexual exploitation from exercising an occupation or conducting a business, whether or not it is remunerated, which involves regular and direct contact with minors.

The Committee further notes that the appendix to the Framework Protocol for the protection of victims of human trafficking concerning action for the identification and provision of care for child victims of trafficking entered into force on 1 December 2017. The Committee notes the CEOE's indication that the network of Spanish enterprises is mainly composed of small and medium-sized enterprises (SMEs) and microenterprises and that it is once again calling on the Government to take the social partners into consideration in the context of the training initiatives under the Framework Protocol. The Committee notes the Government's indication that, in the context of the plans of action of the labour inspectorate, the participation of occupational associations and trade unions has been ensured through a general council, in accordance with section 11 of the regulations governing the work of the National Labour and Social Security Inspectorate (Royal Decree No. 192/2018). ***The Committee requests the Government to continue its efforts to protect children under 18 years of age against trafficking in persons, and to involve the social partners in the measures and action taken. The Committee also requests the Government to provide detailed information on the procedure followed and the results achieved in the context of the Protocol on unaccompanied foreign minors and the appendix to the Framework Protocol for the protection of victims of human trafficking. Finally, it requests the Government to provide information on the adoption of the Bill for the comprehensive protection of children and young persons from violence, and a copy once it has been adopted***.

*Clause (d). Children at special risk. Migrant children and unaccompanied minors.* The Committee previously reminded the Government that migrant children are particularly exposed to the worst forms of child labour and requested the Government to intensify its efforts to protect these children from the worst forms of child labour, particularly by ensuring their integration into the school system. It also requested the Government to provide information on the measures taken and the results achieved in this respect.

The Committee notes the UGT's indications that the Council of Ministers has established a working group on migrant children in conjunction with the Office of the Public Prosecutor, the autonomous communities and non-governmental organizations (NGOs) to analyse proposals for a template for the care of unaccompanied foreign minors. However, the UGT emphasizes that the most representative trade unions in the country have not been invited to join this working group, even though they represent people working at reception centres for minors. The UGT also expresses concern at the care template, which involves public contracts or subsidies in which economic criteria take precedence over quality of service. The Committee notes the Government's indications in this regard that an Inter-territorial Coordination Council has been set up to deal with the situation of unaccompanied foreign minors by facilitating the interaction and coordination of all institutions and administrations connected with the provision of care for them. It held its first meeting in September 2018.

The Committee also notes the information on the Programme of guidance and reinforcement for progress and support in education. The total credits allocated to this programme in 2018 were over €81 million, distributed between the autonomous communities. The objective of the programme is to establish support mechanisms to ensure the quality of education through equitable education policies aimed at reducing the drop-out rates from school and vocational training. Guidance and psycho-pedagogical teams located in the region or the school district have information on the socio-economic and family profiles of at-risk groups of pupils. Support is provided by these teams in schools with the involvement of families. ***The Committee requests the Government to continue its efforts to protect migrant children and unaccompanied foreign minors from the worst forms of child labour and to ensure their integration into the school system. The Committee also requests the Government to provide information on the results achieved in the context of the Programme of guidance and reinforcement for progress and support in education, and on the measures taken by the Inter-territorial Coordination Council to facilitate the provision of care for unaccompanied foreign minors***.

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous direct request adopted in 2019.

## Sri Lanka

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government (see paragraph concerning the application of the Convention in practice and labour inspection) as well as on the basis of the information at its disposal in 2019.

*Article 2(2) of the Convention. Raising the minimum age for admission to employment or work.* The Committee previously noted the Government's information that the Ministry of Labour and Trade Union Relations (MoLTUR) was currently in the process of amending relevant labour laws such as the Employment of Women, Young Persons and Children Act No. 47 of 1956, in order to raise the minimum age for admission to work or employment from 14 to 16 years. It trusted that the amendments raising the minimum age for employment to 16 years would be adopted in the near future.

The Committee notes with ***interest*** the Government's indication in its report that it has obtained the approval of the Cabinet of Ministers to increase the minimum age for employment from 14 to 16 years. The Government indicates that the revised draft labour laws and regulations, namely the Employment of Women, Young Persons and Children Act No. 47 of 1956, the Shop and Office Employees Act No. 19 of 1954, the Factory Ordinance No. 45 of 1942, and the Employees' Provident Fund Act No. 15 of 1958, which contain provisions raising the minimum age from 14 to 16 years, would enter into force in 2020. ***The Committee welcomes the measures taken by the Government to raise the minimum age for admission to employment or work from 14 to 16 years, and hopes in this regard that the above-mentioned draft labour laws and regulations will be adopted in the near future. The Committee reminds the Government of the provisions of Article 2(2) of the Convention, which provide that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider sending a declaration of this nature to the Office, once the minimum age fixed by the national legislation is raised to 16 years.***

*Article 2(3). Compulsory education*. The Committee previously noted with interest the adoption of the Compulsory Attendance of Children at School Regulation No. 1 of 2015, which provides for compulsory education from 5 to 16 years of age. It noted however that the minimum age for admission to work or employment was therefore lower than the school-leaving age, and accordingly urged the Government to continue its efforts to raise the general minimum age. ***Noting that the Government is in the process of raising the minimum age for admission to employment or work to 16 years, the Committee once again requests the Government to continue its efforts in this respect, in order to link the minimum age with the age of completion of compulsory schooling, in conformity with the Convention.***

*Application of the Convention in practice and the labour inspectorate*. The Committee previously encouraged the Government to pursue its efforts to ensure the progressive abolition of child labour and to take effective measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children working in the informal sector, including domestic workers.

The Committee notes the Government's information that a special inspection group is in charge of inspecting workplaces specifically for child labour, both in the formal and informal sector. In 2018, it inspected 472 workplaces. Moreover, there is a mechanism to inspect workplaces, including households, where underage children are suspected to be employed, in which interdepartmental teams comprising members of the police and of the Department of Probations and Child Care conduct the inspection together. Accordingly, 129 interdepartmental investigations were conducted following complaints on child labour in 2018, resulting in two instances of child labour. The Committee further notes the Government's information in its supplementary report that in 2019, 169 investigations were initiated following complaints on child labour and 12 cases of child labour were detected. The Government also indicates that investigations on complaints of child labour continued even during the COVID-19 lock down period to ensure the safety and well-being of children. Accordingly, until 31 August 2020, three cases of child labour were detected following investigations conducted in 74 complaints. Moreover, penalties were imposed on four employers in 2019 and one employer in 2020, while compensation was paid to two victims of child labour in 2019.

The Committee further notes the Government's information that it has increased awareness-raising measures on child labour for multiple stakeholders, including the members of the Child Development Committees instituted by the Ministry of Women and Child Affairs in the 25 districts, field officers of the Department of Manpower and Employment, who come into direct contact with school students, teachers and parents, of the five districts in which child labour is estimated to be most prevalent, and the general public. Moreover, in 2019, the field staff of the Department of Labour and the Department of Manpower and Employment were provided trainings on the labour law applicable to children and on the importance of eliminating child labour. In addition, in June 2020 the official YouTube channel of the Department of Labour released five videos on the importance of prevention of child labour. The Government also states that the National Policy on Elimination of Child Labour was adopted in 2017, and that a national action plan is being prepared in this regard. The Committee notes in this regard that the National Steering Committee within the Ministry of Labour is in charge of the coordination and the monitoring of the implementation of the Policy.

The Committee notes that, according to the 2015–16 Child Activity Survey, the total child population aged between 5 and 17 years involved in child labour was 43,714 children (1 per cent). It also notes that the National Policy on Elimination of Child Labour of 2017 indicates that child labour is particularly

prevalent in fisheries, tourism, small private estates and domestic labour. The Committee further observes that both the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights of the United Nations expressed concern that, despite significant progress made, children remain employed as street vendors, in domestic service, in agriculture, mining, construction, manufacturing, transport and fishing (CRC/C/LKA/CO/5-6, paragraph 41 and E/C.12/LKA/CO/5, paragraph 43). ***Welcoming the measures taken by the Government, the Committee requests it to continue its efforts to ensure the progressive elimination of child labour in the country, with a focus on the informal economy. It requests the Government to provide information on the measures taken and the results achieved in this regard, including within the framework of the National Policy on Elimination of Child Labour of 2017. It also requests the Government to continue to provide information on the measures taken to strengthen the capacity and expand the reach of the labour inspectorate regarding children working in the informal sector and on the number of children engaged in child labour identified.***

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year (see *Articles 6 and 7(2)(a) and (b)* on commercial sexual exploitation of children) as well as on the basis of the information at its disposal in 2019.

*Article 3 of the Convention. Worst forms of child labour. Clause (a) and Article 7(2)(a) and (b). Sale and trafficking of children and effective time-bound measures for prevention, assistance and removal from the worst forms of child labour.* The Committee previously noted that there are four safe houses, four certified schools and two national training and counselling centres in the country, which provide medical, legal and psychological services to child victims of trafficking. The Government also stated that 11 "places of safety" for child victims of trafficking were maintained at the provincial level, and that the Ministry of Justice established a National Anti-Human Trafficking Task Force. Moreover, it indicated that in 2016–17, prosecutors have been able to secure six convictions for trafficking of children. The Committee requested the Government to indicate the number of child victims of trafficking who have benefited from the services provided by the safe houses, certified schools and national training and counselling centres. It also requested the Government to continue to prove information on the number of persons prosecuted, convicted and sentenced with regard to cases involving trafficking of children.

The Government indicates in its report that it has taken various measures to prevent trafficking in persons, including the development of training and awareness raising programmes and campaigns for government officials and the general public. The Government further indicates the adoption of the National Strategy Plan to Monitor and Combat Human Trafficking 2015–19. The implementation of this Strategy Plan is a key responsibility of the National Anti-Human Trafficking Task Force led by the Ministry of Justice. The Government further states that the task force is in charge of monitoring and strengthening the coordination among state actors, increasing victim identification and prosecutions, and improving the protection accorded to victims. The Government also indicates that during the reporting period, two suspected cases of trafficking in children for labour or commercial sexual exploitation were reported to the Sri Lanka Police. The Committee notes that, according to the statistics of the National Child Protection Authority, in 2018, 125 cases of trafficking were reported to it. It notes the Government's indication, in its report to the United Nations Committee on the Rights of the Child (CRC) under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) of April 2019, that there is a special unit in the Sri Lanka Police to investigate complaints relating to trafficking of children (CRC/C/OPSC/LKA/Q/1/Add.1, paragraph 4). ***While taking due note of the measures taken by the Government to prevent trafficking in children, the Committee requests it to take the necessary measures to ensure that perpetrators of trafficking of children are effectively prosecuted and that sufficiently effective and dissuasive penalties are imposed on them in practice, and to supply information in this respect. It also requests the Government to provide information on the number of child victims of trafficking identified by the special unit in the Police established for this purpose. Noting the absence of information from the Government on this point, the Committee once again requests it to indicate the number of these children who have benefited from the services provided by the safe houses, certified schools and national training and counselling centres.***

*Clause (b). Use, procuring or offering of a child for prostitution, the production of pornography or pornographic performances.* In its previous comments, the Committee noted that sections 286A, 288A, 360A and 360B of the Penal Code, as amended, prohibited the use, procuring or offering of children for prostitution, and for pornographic performances. It noted the high incidence of children in prostitution. The Committee therefore urged the Government to strengthen its efforts to ensure that perpetrators were brought to justice, thorough investigations and prosecutions of perpetrators were carried out, and sufficiently effective and dissuasive penalties were imposed in practice.

The Committee notes the Government's indication that although there is a prevalence of child prostitution in certain areas of the country, there is an absence of accurate statistics in this regard. It

indicates, in its Policy on Elimination of Child Labour in Sri Lanka (2017), that the sexual exploitation of children among young boys (the "beach boy" phenomenon) in tourism is of high concern because of the rapid increase in tourism and the willingness to expand it further. The Government also states, in its report to the CRC under the OPSC of October 2018, that issues pertaining to child prostitution and child pornography are critical, with increasing access to information and communication technologies which have brought with them the concern that children will be exposed to harm through these platforms (CRC/C/OPSC/LKA/1, paragraph 2). In this report, it further indicates that a national database on complaints received by the police desks, containing a special segment on complaints relating to sexual exploitation and pornography, has been established (paragraph 59).

The Committee further notes that, in its report to the CRC under the OPSC of April 2019, the Government indicates that the Sri Lanka Police identified in 2018 nine cases of child pornography and seven cases of procuration of children (CRC/C/OPSC/LKA/Q/1/Add.1, paragraph 2). It observes that, in its concluding observations under the OPSC of July 2019, the CRC expressed concern at the low prosecution rates and a high number of pending cases, and reports of official complicity in relation to cases of child prostitution and child pornography (CRC/C/OPSC/LKA/CO/1, paragraph 29). ***The Committee therefore urges the Government to take the necessary measures to combat child prostitution and child pornography, by ensuring that sections 286A, 288A, 360A and 360B of the Penal Code are effectively applied through investigations and prosecutions of persons suspected of using, procuring or offering children for prostitution, the production of pornography or pornographic performances, including State officials suspected of complicity. The Committee requests the Government to provide information on the application of these sections in practice, indicating in particular the information from the database on complaints relating to prostitution and pornography involving children, the number of investigations, prosecutions and convictions, as well as the specific penalties applied.***

*Clause (d) and Article 4(3). Hazardous work and revision of the list of hazardous types of work.* The Committee previously noted that, according to the 2015–16 Child Activity Survey, 0.9 per cent of children aged 5–17 years (39,007 children) are engaged in hazardous work. The Government stated however that no incidents of hazardous work by children had been detected in the formal economy. The Committee further noted the Government's information that a committee had been appointed by the Commissioner General of Labour to revise the list of hazardous work according to international standards. It requested the Government to pursue its efforts to ensure the protection of children from hazardous types of work, including in the informal economy, and to provide information on the adoption of the new list of hazardous types of work.

The Committee notes the Government's information that, in 2018, 472 workplaces were inspected specifically for hazardous work performed by children and for child labour, through a special group inspection programme, following which one instance of hazardous work by children was identified. The Government indicates that awareness-raising activities were conducted, targeting inter alia all the district child development committees, and the field staff of the Department of Manpower and Employment in the five most child labour prevalent districts, to eliminate hazardous work by children. The Committee takes due note of the Government's indication that the new draft regulation for hazardous occupations, consisting of 77 types of hazardous work, has been finalized in 2018 and approved by the Cabinet of Ministers. The Government also indicates that it will supply a copy of the regulation, once adopted.

The Committee takes note of the National Action Plan for the Protection and Promotion of Human Rights 2017–21, which includes activities to eliminate effectively the hazardous forms of child labour. ***The Committee encourages the Government to pursue its efforts to ensure that children under 18 years of age are not engaged in work that is harmful to their health, safety or morals, and to continue to provide information on the measures taken in this regard. It requests the Government to ensure that the new draft regulation for hazardous occupations will be adopted in the near future, and to provide a copy of the list once it has been adopted.***

*Articles 6 and 7(2)(a) and (b). Programmes of action and effective time bound measures for prevention, assistance and removal of children from the worst forms of child labour. Commercial sexual exploitation of children.* The Committee previously noted the Government's statement that awareness-raising programmes were delivered to the public and tourists to promote child-safe tourism and that 360 hotel staff members had received child protection awareness training in this regard. The Committee accordingly encouraged the Government to strengthen its efforts to combat child sex tourism.

The Committee notes the Government's indication that, in 2016, the National Child Protection Authority has initiated targeted programmes related to the zero tolerance policy of the Government regarding child-sex tourism for foreigners in Bentota and Kalutara, two coastal cities of the country. The Government also states that programmes to combat child labour and child-sex tourism have been conducted for 1,893 beneficiaries in the plantation sector and for education and health staff.

The Committee observes that one of the objectives of the National Plan of Action for Children in Sri Lanka 2016–20 is to protect children from all forms of sexual exploitation in relation to trafficking, sale and commercial sex networks, and to respond to the needs of such children for rehabilitation. It also takes

note of the Policy Framework and National Plan of Action to address Sexual and Gender based Violence in Sri Lanka 2016–20, which focuses, inter alia, on preventing the commercial sexual exploitation of children, by raising awareness against this phenomenon, strengthening the existing mechanism of detection and responding to complaints. The Committee notes the Government's information, in its report to the CRC under the OPSC of October 2018, that with regard to the online safety of children including from pornography, it is developing programmes to raise awareness among children (CRC/C/OPSC/LKA/1, paragraph 58). However, the Committee notes that, in its concluding observations under the OPSC of July 2019, the CRC expressed concern about reported cases of parents encouraging children, particularly girls, to enter the sex industry (CRC/C/OPSC/LKA/CO/1, paragraph 19). In this regard, the Committee notes the Government's information in its supplementary report that in 2018, four legal actions were initiated for the offences related to the commercial sexual exploitation of children and in 2019 and from January to 31 August 2020, seven legal actions each were initiated. ***Taking due note of the measures taken by the Government, the Committee requests it to pursue its efforts to eliminate the commercial sexual exploitation of children, as well as to prevent the engagement of children in commercial sexual exploitation and to provide direct assistance for the removal, rehabilitation and social integration of child victims of commercial sexual exploitation. It also requests the Government to provide information on the number of children who have been removed from commercial sexual exploitation and who have been rehabilitated and socially integrated.***

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

## Sudan

### Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

*Article 2(1) of the Convention. Scope of application, labour inspectorate and application of the Convention in practice.* In its previous comments, the Committee noted the Government's indication that efforts by the State bodies in collaboration with civil society organizations were ongoing to tackle the phenomenon of child labour. It also noted the establishment of Family and Child Police Protection Units to monitor child labour as well as the development of special labour inspection programmes in the informal and the agricultural economy. The Committee requested the Government to provide information on the measures taken in collaboration with the civil society organizations to ensure the elimination of child labour; the actions taken by the labour inspection to investigate and monitor child labour, particularly in the informal economy; and on the measures taken by the Family and Child Police Protection Units to monitor child labour.

The Committee notes the Government's information in its report that the civil society organizations are actively involved in celebrating the International day for Protection of Children, annually. The Government also indicates that the Family and Child Police Protection Units are entrusted to adopt programmes and activities for the protection of family and children from all forms of violations which are in accordance with the existing legislation and obligations under the international and regional conventions. The Government further indicates that an action plan for the management of inspections relating to the monitoring of child labour has been formulated and is awaiting implementation.

The Committee notes the statistical information provided by the Government concerning the percentage of children between the ages of 5–17 years involved in child labour in each of the states. Accordingly, the state of East Darfur indicates the highest percentage with 49.4 per cent, followed by South Darfur, Central Darfur, South Kordofan and Blue Nile with 48.2 per cent, 45.1 per cent, 41.4 per cent and 38.1 per cent, respectively as compared to the state of Khartum with 7.5 per cent. In this regard, the Committee notes from the ILO publication of 2019 entitled, *Child Labour in the Arab Region: A Quantitative and Qualitative Analysis* that Sudan is one of the countries across the Arab region showing the highest rates of child labour with 12.6 per cent among children aged 5-14 years. Among children aged 5–14 years, 18.1 per cent are involved in paid non-family work, 19.9 per cent in self-employment and 62 per cent in unpaid family work with agriculture being the predominant sector of activity (67.5 per cent), followed by the service sector (23.4 per cent) and the industrial sector (9.1 per cent). While noting the measures taken by the Government, the Committee must express its ***concern*** at the significant number of children below the minimum age who are involved in child labour in Sudan. ***The Committee urges the Government to intensify its efforts to ensure the progressive elimination of child labour, with particular focus on the States of South Darfur, Central Darfur, South Kordofan and Blue Nile. It requests the Government to provide information on the specific measures taken in this regard, including the measures taken in collaboration with the civil society organizations, and the programmes adopted by the Family and Child Police and Protection units. It also requests the Government to take the necessary measures to ensure the implementation of the action plan for the management of inspections monitoring child labour, including measures to strengthen the capacities and expand the reach of the labour inspectorate to the agricultural and informal economy where child labour is more prevalent. It requests the Government to provide information on the measures taken in this regard and the results achieved.***

*Article 2(3) of the Convention. Compulsory schooling.* In its previous comments, the Committee requested the Government to pursue and strengthen its efforts to reduce the number of out-of-school children under 14 years of age and to provide statistical information on the results achieved.

The Committee notes the Government's information that the European Union (EU) has been funding several programmes to improve the quality of education in eastern Sudan and the southern states and for the displaced populations, including funding for the education and vocational training projects in the states of Khartoum, Gedaref and Kassala. The Committee notes from a UNICEF report "New Horizons for Education in Sudan" of 2020 that Sudan has one of the largest numbers of out-of-school children in the Middle East and North Africa Region. An estimated over three million children, aged 5–13 years are not in school. ***Noting with concern that a high number of children under 14 years are out-of-school in Sudan, the Committee urges the Government to strengthen its efforts to improve the functioning of the education system thereby reducing the number of out-of-school children. It also requests the Government to provide information on the measures taken in this regard, including information on the EU funded programmes, and the statistical information on the results achieved, particularly with respect to increasing the school enrolment rates and reducing the drop-out rates.***

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). Slavery and practices similar to slavery.* 1. *Abductions and the exaction of forced labour.* In its previous comments, the Committee noted the various legal provisions in Sudan which prohibit the forced labour of children (and abductions for that purpose), including article 30(1) of the Constitution of 2005, section 32 of the Child Act of 2004, and section 312 of the Penal Code. However, the Committee noted under several reports of the United Nations bodies, such as the report of the Secretary-General on Children and Armed Conflict, that cases of abduction of children for labour exploitation had been reported including in Abyei, Blue Nile and South Kordofan. In this regard, it noted the Government's indication that special courts were set up to eliminate the practice of abduction and that psychological and social support, education, work opportunities, and skills training were also provided to children who had been abducted. The Committee urged the Government to continue to strengthen its efforts to eradicate abductions and the exaction of forced labour from children under 18 years of age, and to provide information on the effective and time-bound measures taken to this end.

The Committee notes the Government's information in its report that the National Committee for Combating Human Trafficking (NCCT) continues its efforts to eliminate the practice of abduction. It also notes that the NCCT developed a National Action Plan to Combat Human Trafficking 2018-2019 which includes abduction as one of the means of trafficking in persons. Moreover, the Transitional Constitution of 2019, under article 47 prohibits all forms of slavery and states that no person shall be subject to forced labour.

The Committee, however, notes from the Report of the Secretary General on Children and Armed Conflict (A/74/845-S/2020/525, of 9 June 2020) that in Darfur, 18 children (15 boys and three girls) were reported to have been abducted for ransom or forced to work as cattle herders by the Sudan Liberation Army-Abdul Wahid faction (SLA-AW) and other unidentified armed elements (paragraph 162). It further notes from the Report of the Secretary General on the situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan (S/2020/912) of 17 September 2020 that the African Union-United Nations Hybrid Operation in Darfur verified 364 incidents of grave violations, including rape, sexual exploitation and abduction affecting 77 children (37 boys and 40 girls). This report further states that owing to the lack of resources and capacities on the ground, access to justice and accountability responses for child victims of grave violations remains limited (Annex I, paragraph 20). ***Noting with concern the high incidence of grave violations involving children, including abductions for forced labour, the Committee urges the Government to take immediate measures to ensure that thorough investigations and prosecutions of offenders abducting children under 18 years for forced labour are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It requests the Government to provide information on the activities undertaken by the NCCT in eliminating the practice of abduction of children for forced labour and the results achieved.***

2. *Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted the Government's indication that the legislation, including the Child Labour Law, the Police Law, and the Civil Service Law specify that no child under 18 years of age shall be recruited in the army, and that penalties are imposed in cases of recruitment. It also noted the Government's statement that various measures had been taken to prevent child recruitment in the armed forces including the signing by the Government with the UN in March 2016, of an Action Plan to end and prevent the recruitment and use of children by its security forces. The Committee, however, noted with deep concern the persistence of the practice of recruiting and using children under the age of 18 years by armed forces and groups. It urged the Government to take immediate and effective measures to put a stop in practice to the compulsory

recruitment of children for use in armed conflict by armed forces and groups as well as to take the necessary measures to implement the action plan to end and prevent the recruitment and use of children in the armed forces.

The Committee notes the Government's information that the action plan is being implemented and mechanisms for its implementation have been established at the ministerial and technical levels as well as in many of the states affected by armed conflict. The Government also indicates that command orders prohibiting the recruitment of children were issued by the Sudanese Armed Forces and the Rapid Support Forces (RSF). In this regard, the Committee notes from the Report of the Secretary General on Children and Armed Conflict of 9 June 2020 that in Darfur, the United Nations verified the recruitment and use of three boys by the Sudan Liberation Army-Abdul Wahid (SLA-AW) and is in the process of verifying 14 alleged cases of recruitment and use of children by the RSF. The Committee further notes the Secretary General's statement welcoming the engagement by the Government with the United Nations for the screening of 1,346 RSF soldiers in South and West Darfur, during which no child was identified (A/74/845-S/2020/525, paragraphs 158 and 169).

The Committee notes the information contained in the Report of 17 September 2020 of the Secretary General on the situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan that the transitional Government of Sudan signed a peace agreement with the SRF alliance and the Sudan Liberation Army (SLA)-Minni Minawi faction, and a joint agreement on principles was signed with the SPLM-N Abdelaziz Al-Hilu faction (S/2020/912, paragraphs 8 and 9). In this regard, the Committee notes the statement made by the UN Secretary General in a press release on the formal signing of the peace agreement on 3 October 2020 that the signing of the Juba Peace Agreement signals the dawn of a new era for the people of Sudan. It is a milestone on the road to achieving sustainable peace and inclusive development. ***While welcoming the peace agreement concluded by the transitional Government and the rebel groups, the Committee requests the Government to continue its efforts to ensure that no child under the age of 18 years shall be used or recruited for armed conflict. In this regard, the Committee urges the Government to continue to take effective measures, in collaboration with the UN bodies operating in the country, to effectively implement the Action Plan to end and prevent the recruitment and use of children in the armed forces. It also requests the Government to take the necessary measures to ensure that thorough investigations and prosecutions are carried out against persons who have recruited or used children under 18 years for armed conflict or persons who continue to do so and that sufficiently effective and dissuasive penalties are imposed on them. It requests the Government to supply information in this regard.***

*Article 7(2). Effective and time-bound measures. Clause (a). Measures to prevent the engagement of children in the worst forms of child labour. Access to free basic education.* In its previous comments, the Committee noted the Government's information concerning the various measures adopted by the Ministry of Education to facilitate access to education. Moreover, it noted from the statistical information provided by the Ministry of Public Education, an increase in the primary school enrolment rates from 57.5 per cent in 2000 to 73 per cent in 2015 and secondary school enrolment rates from 24.1 per cent to 37.1 per cent during the same period. The Committee encouraged the Government to intensify its efforts to improve the functioning of the education system in the country.

The Committee notes that according to the statistics provided by the Government, in 2018, the gross enrolment rate in grade 1 was 86.9 per cent and in basic education and secondary education, it was 73.5 per cent and 39.9 per cent, respectively. An estimated 71,301 children (34,255 girls and 37,046 boys) dropped out of basic education in 2018. The Committee also notes that the Government adopted the Education Sector Strategic Plan (ESSP) 2018-2023 which covers interventions aimed at increasing access to pre-school and quality deliver; increasing access to equity in formal basic and secondary education; improving quality and enhancing retention in basic education; and improving learning and skills development in secondary education. The Committee notes from the ESSP document that though more children are accessing school today, the system is slowed down by high drop-out rates rendering the achievement of universal basic education a big challenge for Sudan. The retention rate dropped from 67 per cent in 2009 to 62 per cent in 2017. The ESSP document further states that according to the 2017 Humanitarian Needs Overview, 1.7 million children and adolescents out of the 4.8 million people in need of humanitarian assistance need basic education services, including 56 per cent internally displaced people (IDPs), 7 per cent refugees, 5 per cent returnees and 32 per cent vulnerable residents. The Committee notes that the ESSP interventions are expected to increase the enrolment rates in basic education by 16 per cent and in secondary education by 7 per cent between 2018 and 2023. The Committee notes with ***concern*** the low enrolment rates and the high drop-out rates at the primary and secondary education levels. ***Considering that education is key in preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to intensify its efforts to improve the functioning of the education system in the country by improving access to basic education for all children, including the IDPs, refugees and vulnerable children. In this regard, it requests the Government to provide information on the specific measures taken within the framework of the ESSP and the results***

***achieved, particularly with regard to increasing school enrolment rates and reducing school drop-out rates. To the extent possible, this information should be disaggregated by age and gender.***

*Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Child soldiers.* In its previous comments, the Committee had requested the Government to supply information on the number of child soldiers removed from armed forces and groups and reintegrated through the actions undertaken by the Disarmament and Demobilization Commission.

The Committee notes the Government's information that the Disarmament, Demobilization and Reintegration (DDR) Commission has developed programmes and measures that enable demobilized children to make the transition from life in a military environment to civilian life and play a key role, as civilians, through their acceptance by their families and communities. The Committee also notes from a report of the United Nations Development Programme that the DDR Programme in Sudan aims at creating conducive environments for the peaceful reintegration of ex-combatants and associated groups. Since its launch, more than 25,000 individuals were demobilized, 31,000 reintegrated and 85 projects were established to help community stabilization. ***The Committee requests the Government to continue to take effective and time-bound measures to remove children from armed conflict and ensure their rehabilitation and social integration. It also requests the Government to continue providing information on the measures taken within the framework of the DDR Programme to remove children from armed conflict and reintegrate them as well as the number of such children removed and reintegrated.***

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

## Syrian Arab Republic

### Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

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

*Application of the Convention in practice*. The Committee previously noted that the ongoing conflict in the Syrian Arab Republic has had an alarming impact on children. It noted that the number of children affected by armed conflict in the Syrian Arab Republic has more than doubled, going from 2.3 million to 5.5 million, and the number of children displaced inside the Syrian Arab Republic has exceeded 3 million.

The Committee takes note of the Government's information in its report on the provisions of national legislation that give effect to the provisions of the Convention. However, the Committee notes that, according to the 2015 UNICEF report entitled "Small Hands, Heavy Burden: How the Syria Conflict is Driving More Children into the Workforce", four and a half years into the crisis, as a result of the war, many children are involved in economic activities that are mentally, physically or socially dangerous and which limit or deny their basic right to education. The report indicates that there is no shortage of evidence that the crisis is pushing an ever-increasing number of children towards exploitation in the labour market. Some 2.7 million Syrian children are currently out of school, a figure swollen by children who are forced to work instead. Children in the Syrian Arab Republic were contributing to the family income in more than three quarters of households surveyed. According to the report, the Syria crisis has created obstacles to the enforcement of national laws and policies to protect children from child labour, one of the reasons being that there are too few labour inspectors. In addition, there is often a lack of coherence between national authorities, international agencies and civil society organizations over the role of each, leading to a failure in national mechanisms to address child labour.

The Committee notes the Government's information in its 5th periodic report submitted to the Committee on the Rights of the Child published on 10 August 2017 (CRC/C/SYR/5, para. 203), that the Ministry of Social Affairs and Labour (MoSAL), in collaboration with the Syrian Authority for Family and Population Affairs (SAFPA) and in cooperation with other stakeholders, developed a National Plan of Action for the Elimination of the Worst Forms of Child Labour (NPA-WFCL). The Government also indicates that, in collaboration with UNICEF, the SAFPA conducted a survey on the worst forms of child labour in two industrial towns, Hassia in Homs and Haouch el Blas in Damascus.

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee must once again express its ***deep concern*** at the situation of children in the Syrian Arab Republic who are affected by the armed conflict and driven into child labour, including its worst forms. ***The Committee urges the Government to take immediate and effective measures in the framework of the implementation of the NPA-WFCL to improve the situation of children in the Syrian Arab Republic and to protect and prevent them from child labour. It requests the Government to provide information on the results achieved, as well as the results of the surveys conducted in Hassia and Haouch el Blas.***

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

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

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

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict.* The Committee previously noted that the Syrian Arab Republic had adopted a series of legislative reforms such as Law No. 11/2013 which criminalizes all forms of

recruitment and the use of children under the age of 18 years by armed forces and armed groups. It noted, however, that numerous armed groups in the Syrian Arab Republic, including the Free Syrian Army affiliated groups (FSA), the Kurdish People Protection Units (YPG), Ahrar al-Sham, Islamic State in Iraq and Sham/the Levant (ISIS/ISIL) and other armed groups were reportedly recruiting and using children for logistics, handling ammunition, manning checkpoints and as combatants.

The Committee notes the Government's indication in its report that armed terrorist groups recruit children and involve them in violence and exploit them sexually. The Committee notes that, according to the report of the Secretary-General on the situation of human rights in the Syrian Arab Republic of 9 June 2016 (A/70/919, paragraphs 50–52), from early 2015, UNICEF verified 46 cases of recruitment (43 boys, one girl, two unknown): 21 were attributed to ISIL, 16 to non-state armed opposition groups, five to armed groups affiliated with the Government, two (including a girl) to YPG, and two to government forces. UNICEF reported that children were increasingly recruited at younger ages (some as young as 7 years old) by non-state armed groups. Children's participation in combat was widespread and some armed opposition groups forced children to carry out grave human rights abuses, including executions and torture, while government forces allegedly submitted children to forced labour or used them as human shields. The Secretary-General also refers to reports from the OHCHR, according to which ISIL publicly announced, on 11 December 2015, the already known existence of a children's section among its ranks, the "Cubs of the Caliphate". The OHCHR also received allegations that ISIL was encouraging children between 10 and 14 years of age to join, and that they were training children in military combat.

The Committee further notes that, according to the report of the Secretary-General on children and armed conflict of 20 April 2016 (2016 report of the Secretary-General on children and armed conflict, A/70/836-S/2016/360, paragraphs 148–163), a total of 362 cases of recruitment and use of children were verified (the Secretary-General indicates that the figures do not reflect the full scale of grave violations committed by all parties to the conflict), and attributed to ISIL (274), the Free Syrian Army and affiliated groups (62), Liwa' al-Tawhid (11), popular committees (five), YPG (four), Ahrar al-Sham (three), the Nusrah Front (two) and the Army of Islam (one). Of the verified cases, 56 per cent involved children under 15 years of age, which represents a significant increase compared with 2014. The Secretary-General further indicates that the massive recruitment of children by ISIL continued, and that centres in rural Aleppo, Dayr al-Zawr and rural Raqqah existed that provided military training to at least 124 boys between 10 and 15 years of age. Verification of the use of child foreign fighters increased as well, with 18 cases of children as young as 7 years of age. In addition, the recruitment and use of children as young as 9 years of age by the Free Syrian Army was also verified, as well as the recruitment of 11 Syrian refugee children from neighbouring countries by Liwa' al-Tawhid, and the YPG continued to recruit boys and girls as young as 14 years of age for combat roles. Recruitment and use by pro-government groups was also verified, with five cases of boys being recruited by the Popular Committee of Tallkalah (Homs) to work as guards and conduct patrols. In addition, there were allegations of the use of children by government forces to man checkpoints.

The Committee must once again ***deeply deplore*** the use of children in armed conflict in the Syrian Arab Republic, especially as it entails other violations of the rights of the child, such as abductions, murders and sexual violence. It once again recalls that, under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under Article 1 of the Convention, member States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee once again strongly urges the Government to take measures, using all available means, to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed forces and groups. The Committee once again urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of all persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Law No. 11 of 2013. It requests the Government to provide information on the number of investigations conducted, prosecutions brought and convictions handed down against such persons.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee previously noted that, with approximately 5,000 schools destroyed in the Syrian Arab Republic, the resulting sharp decline in children's education continued to be a matter of great concern among the population. This report also indicated that more than half of Syrian school-age children, up to 2.4 million, were out of school as a consequence of the occupation, destruction and insecurity of schools.

The Committee notes that, according to the 2016 report of the Secretary-General on children and armed conflict (paragraph 157), the number of schools destroyed, partially damaged, used as shelters for internally displaced persons or rendered otherwise inaccessible has reached 6,500. The report refers to information from the Ministry of Education, according to which 571 students and 419 teachers had been killed in 2015, and from the United Nations that 69 attacks on educational facilities and personnel were verified and attributed to all fronts, which killed and maimed 174 children. The Committee further notes that, according to the report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic of 5 April 2016 (A/HRC/32/35/Add.2, paragraphs 50–53), a further 400,000 children were at risk of dropping out of school as a direct result of conflict, violence and displacement. While basic education facilities were in place in the displacement centres visited by the Special Rapporteur, such centres, often using school buildings, offer only limited educational facilities.

According to the same report, UNICEF is working with local partners to reach some 3 million children and has implemented an informal education programme to reduce the number of children out of school. The inter-agency initiative "No Lost Generation" is a self-learning programme aimed at reaching 500,000 children who missed out on years of schooling. In areas hosting high numbers of displaced children, UNICEF is also rehabilitating 600 damaged schools and creating 300 prefabricated classrooms to accommodate 300,000 additional children. The Committee further notes that, according to UNICEF's 2016 Annual Report on the Syrian Arab Republic, UNICEF's interventions in education, focusing on quality, access and institutional strengthening, contributed to an increase in school enrolment from 3.24 million children (60 per cent of school-age population)

to 3.66 million (68 per cent) between 2014–15 and 2015–16. These efforts also resulted in a decrease in the number of out-of-school children from 2.12 million (40 per cent) in 2014–15 to 1.75 million (32 per cent) in 2015–16.

Nevertheless, the Committee notes that, in his report, the Special Rapporteur on the human rights of internally displaced persons declares that the challenge of providing even basic education access to many internally displaced children is immense and many thousands of children are likely to remain out of education in the foreseeable future (A/HRC/32/35/Add.2, paragraph 53). The Committee is, therefore, once again bound to express its **deep concern** at the large number of children who are deprived of education because of the climate of insecurity prevailing in the country. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to strengthen its efforts and take effective and time-bound measures to improve the functioning of the educational system in the country and to facilitate access to free basic education for all Syrian children, especially in areas affected by armed conflict, and giving particular attention to the situation of girls. It requests the Government to provide information on concrete measures taken in this regard.***

*Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration.* 1. *Children affected by armed conflict.* The Committee previously noted that the recruitment and use of children in armed conflict in the Syrian Arab Republic had become common and that a great majority of the children recruited are trained, armed and used in combat.

The Committee notes the Government's indication that the competent authorities in the Syrian Arab Republic seek to care for children recruited in armed conflict and to help them return to ordinary life. However, the Committee notes with ***deep concern*** that the situation in the Syrian Arab Republic has not changed and that not only are there no reports of children having been withdrawn from armed forces and groups in the 2016 report of the Secretary-General on children and armed conflict but that, according to this report, children continue to be recruited and used in armed conflict. ***The Committee, therefore, strongly urges the Government to take effective and time-bound measures to prevent the engagement of children in armed conflict and to rehabilitate and integrate former child combatants. It once again requests the Government to provide information on the measures taken in this regard and on the number of children rehabilitated and socially integrated.***

2. *Sexual slavery.* The Committee previously noted that ISIS abducted hundreds of Yazidi women and girls, most of whom were sold as "war booty" or given as "concubines" to ISIS fighters, and that dozens of girls and women were transported to various locations in the Syrian Arab Republic, including Al Raqqah, Al Hasakah and Dayr az Zawr, where they were kept in sexual slavery.

The Committee notes with ***regret*** the absence of information in the Government's report on this issue. It notes that, according to the report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 15 June 2016 entitled "They came to destroy: ISIS Crimes Against the Yazidis" (A/HRC/32/CRP.2), ISIS has sought to destroy the Yazidis through such egregious human rights violations as killings, sexual slavery, enslavement, torture and mental harm. The report indicates that over 3,200 women and children are still held by ISIS. Most are in the Syrian Arab Republic where Yazidi girls continue to be sexually enslaved and Yazidi boys indoctrinated, trained and used in hostilities. The report reveals that captured Yazidi women and girls over the age of 9 years are deemed the property of ISIS and are sold in slave markets or, more recently through online auctions, to ISIS fighters. While held by ISIS fighters, these Yazidi women and girls are subjected to brutal sexual violence and regularly forced to work in their houses, in many instances forced to work as domestic servants of the fighter and his family. The Committee ***deeply deplores*** the fact that Yazidi children continue to be victims of sexual slavery and forced labour. ***While acknowledging the difficult situation prevailing in the country, the Committee strongly urges the Government to take effective and time-bound measures to remove Yazidi children under 18 years of age who are victims of forced labour and sexual exploitation and to ensure their rehabilitation and social integration. It once again requests the Government to provide information on specific measures taken in this regard, and the number of children removed from sexual exploitation and rehabilitated.***

*Clause (d). Identifying and reaching out to children at special risk. Internally displaced children.* The Committee previously noted that, by early 2013, there were 3 million children displaced and in need of assistance inside the Syrian Arab Republic.

The Committee notes that, according to the report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic of 5 April 2016 (A/HRC/32/35/Add.2, paragraph 67), the extent of the conflict and displacement has had a massive impact on children, many of whom have experienced violence first-hand and/or witnessed extreme violence, including the killing of family members and/or separation from family members. The Special Rapporteur indicates that child protection concerns and issues, including child labour resulting from parents' loss of livelihood, trafficking, sexual and gender-based violence and early and forced marriage, continue to be reported. Children have also been recruited and used by different parties to the conflict, both in combat and support roles. ***Observing with concern that internally displaced children are at an increased risk of being engaged in the worst forms of child labour, the Committee once again strongly urges the Government to take effective and time-bound measures to protect these children from the worst forms of child labour. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

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

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

## Tajikistan

### Minimum Age Convention, 1973 (No. 138) (ratification: 1993)

*Article 2(1) of the Convention.* 1. *Minimum age for admission to employment or work.* In its previous comments, the Committee noted that despite its reiterated comments for many years, the Labour Code

of 2016, in its section 21, prohibits the employment of children under 15 years, which is lower than the minimum age of 16 years specified by the Government at the time of ratification. The Committee further emphasized that the objective of the Convention is to eliminate child labour and that it allows and encourages the raising of the minimum age but does not permit the lowering of the minimum age once specified.

The Committee notes with ***deep regret*** that the Government does not provide information on any progress made in the amendment of section 21 of the Labour Code of 2016. ***The Committee therefore once again strongly urges the Government to take the necessary measures to ensure that section 21 of the Labour Code of 2016 is amended in order to align this age to the one specified at the time of ratification, namely a minimum age of 16 years, and bring it into conformity with the provisions of the Convention. It further requests the Government to provide information on any progress made in this regard.***

2. *Scope of application and labour inspection.* In its previous comments, the Committee noted that the Labour Code does not seem to apply to work done outside employment contracts. It further noted that the State Supervisory Service for Labour, Migration and Employment under the Ministry of Labour supervises and monitors compliance with labour legislation, including monitoring of child labour in the formal and informal economy as well as children working on a self-employed basis. The Committee requested the Government to provide information on the number of inspections carried out and the number of violations related to child labour detected by the State Supervisory Service in the informal economy.

The Committee notes an absence of information on this point in the Government's report. ***Referring to its comments made under the Labour Inspection Convention, 1947 (No. 81), the Committee once again requests the Government to take the necessary measures to strengthen the capacity and expand the reach of the State Supervisory Service to ensure appropriate monitoring of child labour in the informal economy and to guarantee the protection afforded by the Convention to children under the age of 16 years who are working in the informal economy. It also once again requests the Government to provide information on the number of inspections conducted by the State Supervisory Service in the informal economy as well as on the number and nature of violations detected with regard to the employment of children in this sector, and on the penalties applied.***

*Article 3(2). Determination of types of hazardous work*. ***With regard to the list of hazardous types of work prohibited to children under the age of 18 years, the Committee requests the Government to refer to its detailed comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).***

*Application of the Convention in practice.* The Committee previously noted from the Working children in the Republic of Tajikistan: The results of the child labour survey 2012-2013 (CLS report), issued on 17 February 2016, conducted in cooperation with ILO–IPEC, that of the 2.2 million children aged between 5 to 17 years in Tajikistan, 522,000 (26.9 per cent) were working, with an employment prevalence rate of 10.7 per cent among 5 to 11 year-olds and 30.2 per cent among 12 to 14 year olds. About 82.8 per cent of working children were employed in the agricultural sector, 4.4 per cent in wholesale and retail trade, and 3 per cent in manufacturing and construction. Of the total number of working children, 21.7 per cent were involved in hazardous work, including in agriculture, fishery and related works, forestry and related works, construction and street work. The Committee also noted various activities undertaken by the Child Labour Monitoring Unit (CLMU) in combating child labour and that child labour monitoring committees had been established in the *hukumats* (local councils) of Kulob and Khorugh with the aim of eliminating child labour and to provide assistance to children working in these areas.

The Committee notes from the latest report provided by the Government on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182) that with support from the ILO-IPEC, the national trade unions have carried out a number of activities aimed at the elimination of child labour, including various trainings for trade union labour inspectors, schoolteachers, children, and their parents. The Government also indicates that, under the programme "*Trade union capacity building to tackle forced and child labour"* for 2017-2018, the work on identification of cases of forced and child labour was carried out in 11 districts of the country. The results of the programme were discussed by representatives of trade unions, public organizations, and the ILO. In addition, a Trade Union Federation action plan for preventing and tackling forced labour was devised for the period 2019-2021 based on the outcome of the programme. The Government further indicates that the child labour monitoring committees carried out 10 monitoring exercises in the first half of 2020 at the central market in Rudaki and found three cases of child labour in which young people 14 to 16 years of age were being put to work for a wheelwright *("arobakash")*. The Committee also notes from the 2019 ILO publication *"Some best practices employed in the project "Combating Child Labour and Human Trafficking in Central Asia – Commitment Becomes Action" implemented in Tajikistan in 2017 and 2018"* that the child labour monitoring committees were established in 12 administrative subdivisions covering all districts of the country.

The Committee however notes that the UN Committee on the Rights of the Child (CRC) in its 2017 concluding observations expressed serious concern that approximately a quarter of all children aged

between 5 and 17 from families facing social and economic hardships are engaged in economic activity. The CRC further recommended to reinforce the capacity of the ministerial CLMU and the local level child monitoring committees (CRC/C/TJK/CO/3-5, paragraph 43). ***The Committee requests the Government to continue its efforts to ensure the progressive elimination of child labour, in particularly, in hazardous work, in the country. The Committee further requests the Government to provide information on the impact of the activities undertaken by the CLMU and the child labour monitoring committees in terms of the number of children identified, removed and assistance provided.***

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

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)

*Article 4(1) of the Convention. Determination of hazardous work.* Following its previous comments, the Committee notes with ***satisfaction*** the adoption of the Government Decree No. 169 of 2014, which sets out the hazardous types of work prohibited to children under 18 years of age. In particular, the Government Decree No. 169 of 2014 contains an extensive list of the hazardous types of work in the different sectors of economy, such as mining, construction, agriculture, transport, metallurgical and chemical industries. It also sets out the maximum admissible weights that should be carried or lifted by young persons. ***The Committee requests the Government to provide information on the application in practice of the Government Decree No. 169 of 2014, including the violations reported and penalties imposed to perpetrators.***

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

## Togo

### Minimum Age Convention, 1973 (No. 138) (ratification: 1984)

*Article 1 of the Convention. National policy and application of the Convention in practice.* The Committee previously noted with concern the number of children under the minimum age who worked in Togo and urged the Government to intensify its efforts to combat child labour, particularly in agriculture and in the informal economy.

The Government indicates in its report that in 2016, the dashboard on child protection in Togo indicated that 1,424 children under 15 years of age were working; 860 of them were removed with the support of social welfare and non-governmental organizations. The Committee notes the lack of information provided by the Government on the steps taken to eliminate child labour. It also notes that the 2019-2022 Decent Work Country Programme (DWCP) provides for the implementation of a plan to combat unacceptable forms of work, including child labour and its worst forms.

The Committee notes that, according to the Multiple Indicator Cluster Survey (MICS) conducted in 2017 by the National Institute of Statistics and Economic and Demographic Studies (INSEED), in collaboration with the Ministry of Health and UNICEF, 43.2 per cent of children between 5 and 11 years of age are engaged in child labour and 25.2 per cent work in hazardous conditions (page 319). With regard to children between 12 and 14 years of age, 54.9 per cent are engaged in child labour and 39.4 per cent work in hazardous conditions (page 319). The Committee also notes the observations of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, in the report on her visit to Togo in May 2019, that children continue to work in markets in Lomé as porters and vendors. She emphasized that child labour was a socially acceptable practice. The Committee is bound to express its ***deep concern*** with regard to the persistent and considerable number of children who work in Togo, including in hazardous conditions. ***The Committee therefore urges the Government to take the necessary steps to ensure the effective abolition of child labour, including in hazardous work, particularly through the adoption and implementation of a national policy for the eradication of child labour. The Committee also asks the Government to take steps, without delay, to raise awareness of child labour among communities, and to provide information in this respect.***

*Article 2(1). Scope of application and labour inspection.* The Committee previously noted that section 150 of the Labour Code of 2006 provides that children under 15 years of age may not be employed in any enterprise nor perform any type of work, even on their own account. It requested the Government to continue taking the necessary steps to strengthen the capacity of the labour inspection services to ensure that all children under 15 years of age, including those working on their own account or in the informal economy, benefit from the protection afforded by the Convention.

The Government indicates that the "Governance Project", which aims to strengthen inspectors' capacity with regard to fundamental principles and rights at work, has enabled labour inspectors to receive training on inspection in the informal economy. The Government also indicates that in 2017, a manual information-gathering system on the labour inspection services' activities was introduced. In addition, the Committee notes, in its 2019 comment on the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), that the Directorate General of Labour (DGT) envisages drawing up a lifelong training plan for labour inspectors. ***The Committee requests the***

***Government to continue its efforts to strengthen the capacity of the labour inspection services, including in the informal economy, to identify children working below the minimum age for admission to employment, and asks the Government to provide information in this respect, as well as on the inclusion in the training plan for training on child labour. The Committee also requests the Government to provide information on the data gathered using the labour inspection services' data-gathering system concerning child labour, including statistical information on the number and nature of reported violations, and the penalties imposed in the event of violations.***

*Article 3(3). Admission to hazardous work from the age of 16 years.* The Committee previously noted that Order No. 1464/MTEFP/DGTLS of 12 November 2007 authorizes the employment of children from the age of 16 years in hazardous work. It also noted that the Order authorizes children over 15 years of age to handle heavy loads, weighing up to 140 kilograms for boys using hand carts. Furthermore, it observed the lack of protection measures for the performance of this work. The Committee asked the Government to take the necessary steps to amend Order No. 1464/MTEFP/DGTLS to bring it into conformity with the provisions of *Article 3(3)* of the Convention.

The Government indicates that new Order No. 1556/MPFTRAPS of 22 May 2020, determining the hazardous types of work that children are prohibited from performing, has been adopted and has replaced the previous Order No. 1464. With regard to boys employed to carry loads of up to 140 kilograms using hand carts, the Committee takes due note of the increase in the minimum age from 15 to 16 years of age. For this type of work, provision has also been made for children to be given vocational training, or adequate specific instruction, and for adequate hygiene, safety and health measures to be observed. In addition, the employer must pay for the child to undergo a medical examination every six months in order to assess his ability to continue with the work. Labour inspectors are responsible for ensuring compliance with these requirements, including in the informal economy.

However, the Committee notes that, under the provisions of Order No. 1556/MPFTRAPS, activities included among hazardous types of work are still authorized for children from 15 years of age, including carrying, pulling or pushing loads within the weight limit established in section 11. Other activities are authorized from 16 years of age, including turning vertical wheels, winches and pulleys (section 9 of the Order) and carrying, pulling or pushing certain loads within the weight limit established in section 11 of the Order. The Committee observes, on the one hand, that the provisions allow for certain types of hazardous work to be performed by persons under 16 years of age. It notes, on the other hand, that the types of hazardous work authorized for children from 16 years of age, not including the transport of loads using hand carts, do not appear to comply with the strict conditions regarding protection and prior training set out in *Article 3(3)* of the Convention. The Committee reminds the Government that, under *Article 3(3)* of the Convention, the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that: (i) the health, safety and morals of the young persons concerned are fully protected, and (ii) they have received adequate specific training in the relevant branch of activity. ***The Committee therefore requests the Government to take the necessary steps to amend section 11 of Order No. 1556/MPFTRAPS of 22 May 2020, determining the hazardous types of work that children are prohibited from performing in order to guarantee that the hazardous work provided for under this Order can only be performed by children of at least 16 years of age. It also asks the Government to take the necessary steps to ensure that the health, safety and morals of children between 16 and 18 years of age performing certain types of hazardous work (under Order No. 1556/MPFTRAPS) are fully guaranteed and that these children have received adequate specific training in the relevant branch of activity. The Committee asks the Government to provide information on the progress made in this regard.***

*Article 6. Apprenticeship.* In its previous comments, the Committee noted that a draft code on apprenticeship had been prepared, specifying the conditions to be observed in apprenticeship contracts and stipulating that no such contracts may start before the completion of compulsory schooling and, under no circumstances, before 15 years of age. The Committee requested the Government to provide information on the adoption of this code.

The Government indicates that the process of adopting the code on apprenticeship is still under way. The Committee also notes the preparation of the bill amending Act No. 2006-010 of 13 December 2006 issuing the Labour Code. It notes that, according to the reasoning given for the bill, it will, inter alia, improve the regulation of apprenticeship. The Committee notes that section 123 of the amended draft Labour Code provides that an apprenticeship contract may not be concluded with a person under 15 years of age. Section 124 provides that the conditions relating to the conclusion and performance of the apprenticeship contract shall be determined by the legislation in force. ***The Committee takes due note of the bill amending the Labour Code of 2006, which sets the minimum age for the conclusion of an apprenticeship contract at 15 years, and trusts that this bill, as well as the draft code on apprenticeship, will be adopted without delay, in conformity with Article 6 of the Convention. The Committee requests the Government to provide information on the progress made in this respect, as well as a copy of the texts, once they have been adopted.***

*Article 8. Artistic performances.* The Committee previously noted that, under section 150 of the Labour Code, which provides for exceptions to the minimum age for admission to employment or work of 15 years, a draft order (establishing exceptions to the minimum age for admission to employment) had been prepared. The draft order provided that the labour inspector may grant individual permits to children under 15 years of age to allow them to appear in public performances and to participate as actors or extras in films. The Government indicated that these exceptions would specify the authorized number of hours of work and working conditions. The Committee therefore asked the Government to take the necessary steps to adopt the draft order with a view to bringing the legislation into conformity with *Article 8* of the Convention.

The Government indicates that the draft order is now outdated due to the ongoing revision of the Labour Code of 2006. However, the Committee notes that none of the provisions of the bill amending Act No. 2006-010 of 13 December 2006 issuing the Labour Code regulate the participation of children under 15 years of age in artistic performances. Section 191 of the bill reproduces section 150 of the current Labour Code of 2006, establishing that exceptions to the minimum age for admission to employment of 15 years shall be determined by ministerial order. ***The Committee therefore expresses the firm hope that the bill amending the Labour Code will be revised, or that an order will soon be adopted, in order to establish, after consultation with the organizations of employers and workers concerned, a system of individual permits for the participation of children aged under 15 years in artistic performances, which limit the number of hours during which and prescribe the conditions in which employment or work is allowed, in conformity with Article 8 of the Convention. The Committee requests the Government to provide full information on the progress made in this regard.***

## Trinidad and Tobago

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Articles 3(d) and 4(1) of the Convention. Determination of hazardous work.* The Committee previously noted the Government's indication that work in the country would continue on the list of hazardous types of work for children in consultation with the social partners, but urged the Government to ensure that the list would be adopted in the near future, as work in this respect had been ongoing since 2004.

The Committee notes the Government's reiterated reference in its report, in response to the Committee's request, to the Occupational Safety and Health Act, which defines a "young person" as a child of the age of 16 and under the age of 18 years (section 4) and provides for limitations as to the hours of work of young persons (section 54). However, the Committee also notes the Government's indication that the list of occupations deemed hazardous to children has not yet been completed. In this respect, the Committee also notes that Outcome 3 entitled "Children are Protected" of the National Child Policy for 2018–28 (available on the website of the Gender and Child Affairs Division of the Office of the Prime Minister) provides for the prevention of child labour and the involvement of children in hazardous work, including through the definition of hazardous occupations and activities prohibited for children. ***Recalling that, pursuant to Article 1 of the Convention, each Member that ratifies the Convention shall take immediate measures to ensure the prohibition of the worst forms of child labour as a matter of urgency, the Committee once again urges the Government to take the necessary measures to ensure the adoption of the list of hazardous types of work for children in the very near future. It once again requests the Government to provide a copy of that list once it has been adopted.***

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

## Turkey

### Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Turkish Confederation of Employers' Associations (TİSK) communicated with the Government's report.

*Article 1 of the Convention. National Policy designed to ensure the effective abolition of child labour and application of the Convention in practice.* In its previous comments, the Committee noted that the Time Bound National Policy and Programme Framework for Prevention of Child Labour (2005-2015) was in the process of being updated, and therefore requested the Government to provide information in this regard, as well as to strengthen its efforts to ensure the elimination of child labour.

The Government indicates in its report that the Time Bound National Policy and Programme Framework for Prevention of Child Labour 2005-2015 was renewed in 2016 under the name "National

Programme on the Elimination of Child Labour", which has been implemented since March 2017, for the period 2017-2023. The main objective of this Programme is to prevent and eliminate child labour, especially the worst forms of child labour. It includes comprehensive measures such as measures to eradicate poverty, to improve the quality and accessibility of education, and to enhance awareness. The Government further indicates that the Monitoring and Evaluation Board for Eliminating Child Labour, which meets twice a year, is responsible for monitoring and evaluating the National Programme and its Action Plan.

The Committee notes the statement in the communication of TISK that the Action Plan associated with the National Programme on the Elimination of Child Labour 2017-2023 contains, in addition to the above measures, measures aimed at implementing and updating legislation; strengthening existing institutional structures and creating new ones; and widening the social protection and social security net. TISK also indicates that a Joint Declaration to Combat Child Labour has been signed by six ministries including the Ministry of Family, Labour and Social Services, seven social partners, and the ILO, in order to ensure that all children are protected from child labour and its worst forms, through access to education, employment of adult family members, and the extension of social protection. In addition, TISK indicates that in the framework of the National Employment Strategy Action Plans (2014-2023), it is provided, inter alia, that (i) annual plans will be developed to combat child labour; (ii) activities will be organised to raise awareness on child labour at the national and local levels, including among families; and (iii) a monitoring system on child labour will be set up to ensure coordination.

In its report formulated under the Worst Forms of Child Labour Convention, *1999* (No. 182), the Government indicates that units for combating child labour were established in 81 provinces under the Provincial Directorates of Labour and Employment Agency.

The Government states in its supplementary information that a survey on child labour has been conducted by the Turkish Statistical Institute and was published on 31 March 2020. The Committee notes from this survey (Statistics on Child 2019 of the Turkish Statistical Institute) that 146 000 children aged 5-14 years, representing 1.1 per cent of this age group, were engaged in economic activities and that 28 per cent of these children (41 000) did not attend school. In addition, the Committee notes that 32 000 children aged 5-11 years, representing 0.4 per cent of this age group, were engaged in economic activities. Children worked in sectors including services and industry (pages 113, 114 and 116). ***While duly noting the Government's efforts, the Committee requests it to continue to take measures to ensure the progressive elimination of child labour in all sectors. It also requests the Government to provide information on the implementation of the National Programme on the Elimination of Child Labour 2017-2023 and its Action Plan, as well as of the National Employment Strategy Actions Plans 2014-2023. Lastly, it requests the Government to provide information on the activities of the units to combat child labour as well as the results achieved.***

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Turkish Confederation of Employers' Associations (TİSK) communicated with the Government's report.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously urged the Government to take the necessary measures to ensure that the perpetrators of trafficking of children under 18 years of age were prosecuted, and that sufficiently effective and dissuasive penalties were applied in practice. It requested the Government to provide information on the number of prosecutions, convictions, and penalties imposed.

The Government indicates in its report that it introduced numerous administrative and legal measures to combat the trafficking of children under 18 years of age. It states that in the framework of a project to increase the organisational capacity of the women and children sections of the Gendarmerie General Command (2016-2020), training on child abuse and modern slavery were provided to the Gendarmerie staff. The Committee however observes the absence of information in the Government's report regarding the number of prosecutions, convictions and penalties imposed on perpetrators of trafficking of children.

The Committee notes the indication of the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe (GRETA), in its report adopted on 10 July 2019 concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in Turkey, that there are reports of refugee and migrant children, including Syrian children, sometimes unaccompanied, being trafficked or at risk of being trafficked for the purposes of sexual and labour exploitation, including begging, in the agricultural sector and in forced criminality (paragraphs 13 and 124). ***The Committee requests the Government to pursue its efforts to combat the trafficking of children***

***under 18 years of age, including of migrant and refugee children, and to provide further information on the measures that have been taken in this respect. It once again requests the Government to provide information on the specific number of cases of trafficking of children identified, investigated, prosecuted and convicted, as well as the penalties imposed in this regard.***

*Clause (d) and Article 4(1). Hazardous work and excluded categories of work.* In its previous comments, the Committee noted that the Labour Law and the Child Employment Regulation excluded from their scope of application workers in businesses with less than 50 employees in the agricultural and forestry sector, construction work related to agriculture within the framework of the family economy, and domestic service. It noted that the Occupation Health and Safety Law (OSH Law) applied to all workers, including those excluded from the Labour Act, with the exception, inter alia, of domestic workers and self-employed workers. The Government indicated that the Code of Obligations No. 6098 covered domestic service and provided for the obligation of the employers to ensure occupational health and safety at the workplace. The Committee pointed out that children working in the informal economy and the domestic and agricultural sectors constituted high-risk groups who were usually outside the normal reach of labour controls and vulnerable to hazardous working conditions. It urged the Government to ensure that all children under 18 years of age were protected from hazardous work, including those working outside a labour relationship or out of the normal reach of labour controls.

The Government indicates that children working in heavy and hazardous work in Small and Medium-Sized Enterprises were determined as one of the primary target groups of the National Programme on the Elimination of Child Labour (2017-2023) (National Programme). The Committee notes the statement in the communication of TISK that children working on the streets, as well as in agricultural work other than family work and itinerant and temporary agricultural jobs were also determined as priority target groups by the National Programme. This National Programme provides for the modification of the scope of provisions of the Labour Law and the Regulation on Working Conditions in Works Counted as Agriculture and Forestry to cover children working in seasonal agricultural works and enterprises in which the number of workers is 50 or below. The Committee notes that the National Programme also provides for the modification of the Child Employment Regulation in this regard. The National Programme has determined work on the streets, heavy and hazardous work in Small and Medium-Sized Enterprises, and mobile and temporary agricultural work, except for family business, as worst forms of child labour in the country. The National Programme underlines that child labour in seasonal mobile and temporary agricultural labour is one of the most hazardous sectors in terms of occupational diseases and work accidents (page 21). Most children work on a seasonal basis, for four to seven months, leaving their homes to work notably in plant production work such as weeding, cleaning, harvesting, in extreme hot and humid environments. They are exposed to dangers caused by chemical substances, bug bites, back pain, hazards of machinery and equipment, long working hours, and heavy load lifting. In addition, a child's vulnerability to violence, neglect and abuse can be increased by agricultural work and seasonal agricultural migration (pages 33 and 34).

The Committee also notes, from the Government's supplementary information, that according to the Statistics on Child 2019 of the Turkish Statistical Institute, published on 31 March 2020, 720 000 children aged 5–17 years were engaged in economic activities, including 30.8 per cent in agriculture. The survey indicates that the risk of accident concerns 6.4 per cent of children engaged in economic activities. On average, 9.1 per cent of children aged 5–17 years engaged in economic activities were exposed to factors negatively affecting their physical health, such as: working in extremely hot/cold weather or in an excessively humid environment for 12.9 per cent of these children; exposure to chemicals, dust, fumes, smoke or gases for 10.8 per cent of these children; as well as working in difficult work postures or work movements and handling heavy loads for 10.1 per cent of these children (page 119). ***The Committee therefore once again urges the Government to ensure that all children under 18 years of age are protected from hazardous work, including in the agricultural sector, and to provide information on any progress made in this regard. It also requests the Government to provide information on any eventual modification provided for by the National Programme on the Elimination of Child Labour of the scope of the provisions of the Labour Law and related Regulations to cover children working in seasonal agricultural works and enterprises in which the number of workers is 50 or below.***

*Articles 5 and 7(2). Monitoring mechanisms and effective and time-bound measures. Children working in seasonal hazelnut agriculture.* The Committee previously took note of a Pilot Project on the Prevention of the Worst Forms of Child Labour in Seasonal Hazelnut Agriculture until 2018, as well as a Pilot Project on "Testing United States Department of Agriculture's Application Proposals in Hazelnut Supply in Turkey", carried out in collaboration with the ILO. It further took note of the Circular "Access to education for the children of seasonal agricultural workers, migrants and semi-migrant families" of 2016, providing for concrete measures regarding the provision of education to the children of migrant workers and semi-migrant families engaged in seasonal agricultural work, in order to protect them from child labour. The Committee however noted the absence of labour inspection activities covering seasonal agricultural work, in particular the activity of hazelnut picking, between 2013 and 2016, and requested the Government to

strengthen the capacity and expand the reach of the labour inspectorate in agriculture. It also requested the Government to continue its efforts to ensure that children under 18 years of age are not engaged in hazardous work in the agricultural sector, particularly in seasonal agricultural work and the nut harvest.

The Government indicates that a project entitled "Seasonal Agricultural Workers Project" (METIP) has been developed to eliminate the problems faced by seasonal agricultural workers and their families, including directing their children to education instead of work, and is being carried out successfully. In the framework of this project, a Seasonal Agricultural Information System (e-METIP) has been established within the Ministry of Family, Labour and Social Services in cooperation with the Ministries of Interior, Health and National Education, in order to monitor seasonal agricultural workers, their children, and their children's school attendance when they are of compulsory school age. As a result of this monitoring, absenteeism has decreased significantly. The Government further indicates in its supplementary information that the children of families working in seasonal agriculture were 21,023 attending school in the academic year 2017–18, 16,247 in 2018–19, and 15,581 in 2019–20 (in the latter academic year, the COVID-19 Pandemic should be taken into account).

The Government also indicates that the project carried out in cooperation with the ILO, entitled "Integrated Model for the Elimination of the Worst Forms of Child Labour in Seasonal Agriculture in Hazelnut Harvesting in Turkey" and implemented in the provinces of Ordu, Düzce, Sakarya and Şanlıurfa, was extended until 2020. It states that training and awareness-raising activities were carried out for families, garden owners and employers, and that many children working in seasonal agriculture were withdrawn from work and directed to education.

The Committee notes the ILO's information that, in the framework of the "Integrated Model for the Elimination of the Worst Forms of Child Labour in Seasonal Agriculture in Hazelnut Harvesting in Turkey", 1,022 children were withdrawn or prevented from work through provision of education services during the hazelnut harvesting season of 2018. In addition, children in the seasonal agriculture were provided with on-site education, guidance, counselling and rehabilitation services within social support centres during the hazelnut harvesting seasons in 2018 and 2019 in target provinces of Ordu, Düzce and Sakarya. ***Taking due note of the measures taken by the Government to reduce child labour in seasonal hazelnut agriculture, the Committee requests it to continue to provide information on the activities and results of the various projects implemented to reduce child labour in seasonal hazelnut agriculture, including information on the activities and results of the social support centres. Noting the absence of information regarding the activities of the labour inspectorate in agriculture, the Committee requests the Government to take the necessary measures to enable labour inspectors to have access to the sites where seasonal agricultural work is carried out, particularly hazelnut harvesting, in order to ensure that children under 18 years of age are not engaged in hazardous work in seasonal hazelnut agriculture***.

*Article 7(2). Effective and time-bound measures. Clause (b). Provide the necessary and appropriate assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Child victims of trafficking*. The Committee previously noted that the 2016 Regulation on Combatting Human Trafficking and Protection of Victims provided for measures to protect and assist child victims of trafficking. In particular, it provided for the presence of psychologists or social workers during interviews with child victims, for the handling of these children by the relevant units of the Ministry of Family, Labour and Social Services, and for access to education services as well as a voluntary and safe return programme for these children. The Committee requested the Government to continue its efforts to provide the necessary and appropriate direct assistance to child victims of trafficking, including their rehabilitation and social integration, and to provide information on the results achieved.

The Government indicates that it closely works with civil society to assist and protect child victims of trafficking. It specifies that in 2016, 33 victims of trafficking under the age of 18 were identified, 36 in 2017 and 56 in 2018. In addition, the Government indicates in its supplementary information that between January and June 2019, 37 child victims of trafficking were identified. It states that victim identification procedures, which are provided for in the Regulation on Combating Human Trafficking and Protection of Victims, are carried out by the Provincial Directorates of Migration Management. The Government further indicates measures that is has taken to protect unaccompanied minors, such as the establishment of Child Support Centres of the Ministry of Family, Labour and Social Services, which provide support and assistance to unaccompanied children aged 13–18 years of age. The Government also indicates, in its supplementary information, that it has established a Department of Legal Support and Victim Rights as one of the main units of the Ministry of Justice, which aims to support all victims of crime, including victims of trafficking, especially children, as well as to provide them with guidance and to prevent repeated victimization. In this framework, Forensic Support and Victim Services Directorates have been set up and are currently operating in 99 courthouses. The Government indicates that "forensic interview rooms" are in place in 72 courthouses, to ensure that child victims are interviewed in an appropriate environment. The Government adds that, in the framework of various projects carried out in partnership with international organisations in the field of trafficking in persons, two field studies on child trafficking are envisaged.

The Committee takes note of TISK's statement under the Forced Labour Convention, 1930 (No. 29), according to which the Coordination Commission on Combatting Human Trafficking has been established under the Regulation on Combatting Human Trafficking and Protection of Victims, and has decided to create a working group on children. The Committee further notes the indication of the GRETA, in its above-mentioned report adopted on 10 July 2019, that according to the Turkish authorities, the working group on children met in September 2018 and decided that staff dealing with child victims should be provided with awareness-raising activities and training (paragraph 29). The GRETA also indicated that pursuant to the above-mentioned Regulation, child victims of trafficking were referred to the relevant units of the Ministry of Family, Labour and Social Services (paragraph 33). ***The Committee requests the Government to continue its efforts to ensure that child victims of trafficking are removed from this worst form of child labour, rehabilitated and socially integrated. The Committee also requests the Government to provide information on the concrete activities of the units of the Ministry of Family, Labour and Social Services responsible for the care of child victims of trafficking, as well as the measures that have been taken by the working group on children of the Coordination Commission on Combatting Human Trafficking. Lastly, the Committee requests the Government to provide information on the activities of the Department of Legal Support and Victim Rights and its Directorates to support child victims of trafficking, and to provide copies of any studies that have been carried out on child trafficking.***

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

## Turkmenistan

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2010)

The Committee proceeded with the examination of the application of the Convention on the basis of the observations received from the International Trade Union Confederation (ITUC) on 21 September 2020, as well as on the basis of the information at its disposal in 2019. ***The Committee requests the Government to reply to the observations of the ITUC.***

The Committee notes the observations made by the International Trade Union Confederation (ITUC) received on 1 September 2019.

*Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous work.* 1. *Cotton sector.* In its previous comments the Committee noted the Government's information that the provisions under the Education Act of 2013 and the Rights of the Child (State Guarantees) Act of 2014, require children to attend school until the age of 18 and not to be involved in any work, including agricultural work that stops them from attending school. It also noted from the report of the ILO Technical Advisory Mission that took place in Ashgabat in September 2016, the statement made by the Minister of Education that children under the age of 18 years are fully engaged in education in Turkmenistan. Moreover, the statements made by the international organizations and foreign embassies that the mission met with, indicated that there were no reports of child labour in the cotton harvest, although access to the cotton fields was difficult.

The Committee notes the observations made by the ITUC that there were numerous cases of child labour reported during the 2017 cotton harvest season. According to the ITUC, during this period, in the Ruhabat and Baharly districts, there were secret orders that mobilized children into the fields during their fall break and there were "truckloads" of children sent to pick cotton. Massive use of child labour in the Mary, Lebap and Dashoguz regions were reported. The ITUC is of the view that, due to the centrally imposed quotas, local officials feel immense pressure and resort to forced labour and child labour. However, the Committee also notes the ITUC's statement that there were efforts by the Turkmen Government to keep children out of the fields in 2018. According to ITUC, while *Turkmen.news'* (an independent news and human rights organization) monitors witnessed some children in the cotton fields, these seemed to be isolated cases instead of the previous systematic use of child labour.

In this regard the Committee notes the Government's information in its report of 26 February 2018, submitted to the United Nations Human Rights Council that it has adopted national measures to prohibit child labour, particularly in the cotton sector and that during school year, children may not be hired to perform agricultural work that hinders their studies. Furthermore, officials of educational institutions are subject to disciplinary action under labour law for the use of child labour in educational institutions in any activity, including agriculture (A/HRC/WG.6/30/TKM/1, paragraphs 209–212). ***The Committee therefore strongly encourages the Government to continue taking effective measures to ensure that children under 18 years are not engaged in hazardous work or subject to forced labour in the cotton sector, including during the school holidays or their time out of school. It requests the Government to provide specific information on the steps taken in this regard, including measures to enforce the relevant legislation prohibiting children's involvement in the cotton harvest, and on any offences reported, investigations conducted, violations found and penalties imposed.***

2. *State-owned farms and bazaars.* The Committee notes from the recent observations of the ITUC that during the 2019 summer, children in the summer camps, were sent by school authorities into harvesting potatoes on state-owned farms. These children between the ages of 9 and 17 were forced to

work all day, sometimes in extreme temperatures without proper meals or drinking water**.** The ITUC further states that Turkmen News has documented in 2019 and 2020 the widespread exploitation of children in bazaars where they were forced to engage in hard labour, including carrying heavy loads in extreme weather conditions. ***The Committee requests the Government to take the necessary measures to ensure that children under 18 are not engaged in hazardous work, including measures to enforce all relevant legislation prohibiting children's involvement in such work and to keep the Committee informed on any offences reported, investigations conducted, violations found and penalties imposed under all such legislation.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Uganda

### Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, a total of 2.009 million children aged 5–17 years were in child labour (approximately 16 per cent of all children). Moreover, a total of 507,000 children aged 5–17 years were found in hazardous work (25 per cent of the children in child labour). The Committee also noted that the Government acknowledged the problem of child labour in the country and recognized its dangers. It took due note of the Government's indication that the National Action Plan for the elimination of the worst forms of child labour in Uganda (NAP) was launched in June 2012. This NAP is a strategic framework that will set the stage for the mobilization of policy-makers and for awareness raising at all levels, as well as provide a basis for resource mobilization, reporting, monitoring, and evaluation of performance and progress of the interventions aimed at combating child labour. The Committee requested that the Government provide detailed information on the implementation of the NAP and its impact on the elimination of child labour.

The Committee notes the Government's information in its report that the NAP is in the process of being reviewed by the Government with support from the ILO. It also notes, from the ILO–IPEC field office, that a total of 335 children (156 girls and 179 boys) have been withdrawn from child labour and were given skills and livelihood training. Moreover, the child labour agenda has been promoted through the Education Development Partners Forum, Stop Child Labour Partners Forum and other national forums within the education and social development sectors. The Committee finally notes from the 2016 UNICEF Annual Report on Uganda that 7,226 children aged 5–17 years were withdrawn from child labour (page 28). While noting the measures taken by the Government, the Committee must express its ***concern*** at the number of children involved in child labour in the country, including in hazardous work. ***The Committee once again urges the Government to strengthen its efforts to ensure the effective elimination of child labour, especially in hazardous work. In this regard, it requests that the Government provide detailed information on the implementation of the reviewed NAP, once adopted. It also requests that the Government supply information on the application of the Convention in practice, particularly statistics on the employment of children under 14 years of age.***

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

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

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously requested the Government to take the necessary measures to ensure that the procuring or offering of boys under 18 years of age for prostitution is prohibited, to impose criminal responsibility on clients who use boys and girls under 18 years of age for prostitution, and to ensure that boys and girls under 18 years of age who are used, procured or offered for prostitution are treated as victims rather than offenders. The Committee noted that the Director of the Directorate of Public Prosecutions had indicated that efforts were being made to amend the Children's Act of 2000 to fully comply with the Convention on the prohibition of the use, procuring or offering of children for prostitution.

The Committee notes with ***satisfaction*** that section 8A of the Children's (Amendment) Act of 2016 provides that a person shall not engage a child in any work or trade that exposes the child to activities of a sexual nature, whether remunerated or not. It notes that the perpetrator is liable to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.

*Clause (d). Hazardous types of work. Children working in mines.* The Committee observes that, according to the UNICEF Situation analysis of 2015, the Karamoja region has a high incidence of child labour in hazardous mining conditions (page 13). The Committee also observes, from the UNICEF Annual Report of 2016, that 344 girls and 720 boys were removed from the worst forms of child labour, such as mining, as a result of the support of the Ministry of Gender, Labour and Social Development to the strategic plan for the national child helpline. Moreover, the Committee notes that section 8 of the Children's (Amendment) Act of 2016 prohibits hazardous work, and that the list of hazardous occupations and activities in which the employment of children is not permitted (first schedule of the Employment of Children Regulations of 2012) includes the prohibition of children working in mining. The Committee notes with ***concern*** the situation of children working in mines under particularly hazardous conditions. ***The Committee urges the Government to take the necessary measures to***

***ensure the effective application of the Children's (Amendment) Act of 2016 and of the Employment of Children Regulations of 2012, so as to prevent children under 18 years of age from working in mines, and to provide the necessary and appropriate direct assistance for their removal.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk.* 1. *Orphans and vulnerable children.* The Committee previously noted the Government's information that a range of factors has contributed to the problem of child labour, such as orphanhood arising from the HIV/AIDS pandemic. The Committee noted that orphans and vulnerable children (OVCs) in Uganda were recognized in both the Policy on orphans and other vulnerable children and the National Strategic Plan on OVCs. The Committee also noted that the policies and activities of the National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2013–17 (NAP) include orphans and HIV/AIDS affected persons in its target groups. However, noting with concern the large number of children orphaned as a result of HIV/AIDS, the Committee urged the Government to intensify its efforts to ensure that such children are protected from the worst forms of child labour.

The Committee notes the absence of information on this point in the Government's report. The Committee however notes that, according to a report by the Uganda AIDS Commission, entitled: "The Uganda HIV and AIDS country progress report: July 2015–June 2016", approximately 160,000 OVCs received social support services and a mapping of OVC actors was conducted, among other achievements. The Committee also notes that the Second National Development Plan 2015/16–2019/20 outlines two programmes to support OVCs: the SUNRISE–OVC (Strengthening the Ugandan National Response for Implementation of Services for OVCs), and the SCORE (Strengthening Community OVC Response). While taking due note of the strategic plans developed by the Government and the decrease in the number of OVCs, the Committee notes with ***concern*** that there are still approximately 660,000 HIV/AIDS orphans in Uganda, according to UNAIDS estimates for 2015. ***Recalling that children orphaned as a result of HIV/AIDS and other vulnerable children are at particular risk of becoming involved in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children from the worst forms of child labour. It requests the Government once again to provide information on specific measures taken in this respect, particularly in the framework of the Policy on orphans and other vulnerable children, the National Strategic Plan on OVCs, the SUNRISE–OVC and the SCORE, and the results achieved.***

2. *Child domestic workers.* The Committee previously noted that the list of hazardous occupations and activities prohibits the engagement of children under 18 years of age in several activities and hazardous tasks in the sector of domestic work. However, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, approximately 51,063 children, that is 10.07 per cent of the number of children aged 5–17 years engaged in hazardous work in Uganda, are domestic housekeepers, cleaners and helpers. In this regard, the Committee observed that domestic workers form a group targeted by the NAP, and requested the Government to provide information on the impact of the NAP on the protection of child domestic workers.

The Committee notes the absence of information from the Government in this regard. ***Recalling that children in domestic work are particularly vulnerable to the worst forms of child labour, including hazardous work, the Committee once again requests the Government to provide information on the impact of the NAP on the protection of child domestic workers, particularly the number of child domestic workers engaged in hazardous work who have benefited from initiatives taken in this regard.***

3. *Refugee children.* The Committee observes that, according to the UNICEF Uganda situation report of 31 May 2017, there are over 730,000 refugee children in Uganda, among more than 1.2 million refugees. The Committee also observes from the joint Updated regional framework for the protection of South Sudanese and Sudanese refugee children (July 2015–June 2017), developed by UNHCR, UNICEF and NGOs, that South Sudanese and Sudanese refugee children are subjected to child labour in Uganda (page 5). The Committee finally notes that a Uganda Solidarity Summit on Refugees took place in Kampala in June 2017 to showcase the Uganda model of refugee protection and management, to highlight the emergency and long-term needs of the refugees and to mobilize resources. ***While acknowledging the difficult refugee situation prevailing in the country and the efforts provided by the Government, the Committee strongly urges the Government to take effective and time-bound measures as a matter of urgency to specifically protect refugee children from the worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard.***

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

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

## Ukraine

### Minimum Age Convention, 1973 (No. 138) (ratification: 1979)

*Article 2(1) of the Convention.* 1. *Scope of application and labour inspection.* In its previous comments, the Committee noted that the Committee on the Rights of the Child (CRC), in its concluding observations (CRC/C/UKR/CO/3-4, para. 74), expressed concern at the high number of children below the age of 15 years working in the informal economy. In this respect, it also noted the Government's statement that the supervision of the use of child labour in the informal economy remained an outstanding issue which concerned, above all, the right of access to workplaces.

The Committee notes from the statistics provided by the Government, in its report, in response to the Committee's request for labour inspection statistics (in the formal and informal sector), that there appears to be a decrease in the activities of the labour inspection services as regards child labour, from 163 workplace visits in 2014 (with 334 minors found working), to 90 workplace visits in 2017 (with

177 minors found working). The Government adds that in 2018, 241 minors were found working during inspections. In this respect, the Committee refers to its comments adopted in 2019 under the Labour Inspection Convention, 1947 (No. 81) in which it noted that the number of labour inspectors had significantly increased since 2018, but in which it also noted with deep concern that several restrictions and limitations on labour inspections remained in force in the country. The Committee also notes from the 2019 conclusions of the European Committee of Social Rights, under the European Social Charter, that in view of the available statistics of that Committee on the number of children aged 5 to 14 years involved in child labour or hazardous work, the prohibition of employment under the age of 15 was not guaranteed in practice. ***The Committee requests the Government to take all necessary measures to ensure that effective labour inspections in the area of child labour are conducted in practice. It also requests the Government to continue to provide information on the activities undertaken by the labour inspection services in this respect, including the number of labour inspections carried out, the number and nature of cases detected, and any follow-up measures taken.***

2. *Minimum age for admission to employment or work.* In its previous comments, the Committee noted that under section 188(2) of the Labour Code, children of 15 years of age are exceptionally authorized to work with the consent of their parents or guardians. In this respect, the Committee observed that section 188(2) of the Labour Code allows young people to carry out an economic activity at an age lower than the minimum age for admission to employment or work specified by Ukraine upon ratifying the Convention, namely 16 years, and that an exception to the minimum age under the Convention is only permissible as regards light work, in line with the conditions as defined in *Article 7(1)* of the Convention.

The Committee notes, from the Government's indication in its report, and the website of the Parliament, that initiatives to amend the Labour Code are ongoing, but that no amendments have been made to the Labour Code so far, and that section 19(3) of the current draft Labour Code continues to contain similar provisions to the ones in section 188(2). ***The Committee once again expresses the firm hope that the Government will take the necessary measures, during the revision of the draft Labour Code, to ensure that no person under the age of 16 years may be admitted to employment or work in any occupation, in conformity with Article 2(1) of the Convention, except for light work as authorized under Article 7(1) of the Convention. It also once again expresses the hope that the revised draft Labour Code will be adopted in the near future.***

*Articles 3(3) and 6. Authorization to perform hazardous work from the age of 16 years and vocational training*. The Committee previously noted that by virtue of section 2(3) of the Order of the Ministry of Health of Ukraine No. 46 of March 1994, persons under the age of 18 years pursuing vocational training may perform hazardous types of work for not more than four hours a day on condition that existing sanitary and health norms on labour protection are strictly observed, without specifying a minimum age. In this respect, the Committee observed that the legislation in force did not explicitly prohibit children between 14 (the age of admission to vocational training) and 16 years to perform hazardous work during vocational training. In this regard, it emphasized that the necessary measures should be taken to ensure that young persons below 16 years of age engaged in apprenticeship do not undertake hazardous work and that measures should be taken to raise the minimum age for admission to hazardous work to 16 years, even if the required protective conditions are adequately provided (2012 General Survey on Fundamental Conventions, paras 380 and 385).

The Committee notes that the Government's report does not contain specific information on this point, but that pursuant to section 299(4) of the draft Labour Code published on the website of the Parliament, hazardous work during vocational training shall only be permitted if children reach the age of 18 upon the end of their vocational training. ***The Committee once again urges the Government to take the necessary measures to ensure that children who follow vocational training programmes or apprenticeships are allowed to perform hazardous work only from the age of 16 years, in conformity with Article 3(3) of the Convention. The Committee requests the Government to provide information on any progress made in this regard.***

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

*Articles 3 and 5 of the Convention. Worst forms of child labour and monitoring mechanisms. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted that the Committee on the Rights of the Child (CRC) in its concluding observations remained concerned that Ukraine continued to be one of the largest source countries of trafficking in Europe. It also noted the Government's information on the training and capacity-building activities in 2016 for the national police on trafficking in persons, and the investigations undertaken in 2015 regarding the application of section 149 of the Criminal Code on trafficking in persons, including six minors. The Committee requested the Government to provide specific information on the number of convictions and the penalties imposed on persons found guilty of trafficking children under 18 years of age.

The Committee notes an absence of information in the Government's report on this issue. In this respect, the Committee refers to its comments on the application of the Forced Labour Convention, 1930 (No. 29) in which it notes with concern the low number of convictions regarding trafficking in persons, despite the significant number of cases brought to justice (in 2018, there were 291 investigations, 168 cases were brought to the courts, and 15 convictions were issued, with five prison sentences). The Committee notes, from the website of the State Judicial Administration, that these convictions concerned trafficking of five children. ***Referring to its comments on the application of Convention No. 29, the Committee strongly urges the Government to ensure that thorough investigations and prosecutions of persons who engage in the sale and trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It also once again requests the Government to provide specific information on the number of prosecutions, convictions and specific penalties applied pursuant to section 149 of the Criminal Code on persons found guilty of trafficking children under 18 years of age.***

*Clause (b). Use, procuring or offering of a child for prostitution, production of pornography or for pornographic performances.* In its previous comments, the Committee noted the grave concern expressed by the CRC in its concluding observations at the increase in the number of cases of sexual abuse, exploitation and involvement of children in prostitution and pornographic materials, and the alarmingly high number of internet users of child pornography (5 million users per month).

The Committee notes the Government's indication in its report in response to the Committee's request that, to strengthen the protection of children from sexual exploitation, amendments were made to the Criminal Code in 2018, including to section 302(4), which now provides for a penalty of between five and ten years for maintenance of brothels or procurement in cases involving children. The Committee also notes that the Government refers to cases concerning the investigation of sexual acts involving children, but that the Government does not provide specific information as regards the use, procuring or offering of children for prostitution, production of pornography or for pornographic performances. ***The Committee requests the Government to take the necessary measures to ensure the effective application of section 301 (import, manufacture, sale and dissemination of pornographic material), section 302 (maintenance of brothels and procurement) and section 303 (pimping or involvement of another in prostitution) of the Criminal Code as regards cases involving children, including the imposition of penalties constituting an effective deterrent. It once again requests the Government to provide statistical information on the number and nature of violations reported in this respect, investigations and prosecutions carried out, and convictions and criminal penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* In its previous comment, the Committee noted from the report of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine (A/HRC/27/75) the suspension of school education in several towns of the Donetsk region due to the armed conflict in the country, and variations in school attendance where schools had remained opened. It further noted from that report that 35 per cent of the 155,800 internally displaced persons from the Donbas region and the Crimea, had been children who needed to be enrolled in school, and that an estimated 450,000 internally displaced persons, including children had been identified from the cities of Donetsk and Luhansk. The Committee had expressed its concern at the situation of children deprived of education in the climate of insecurity prevailing in the country.

The Committee notes the Government's indication, in response to the Committee's request, that between 2016 and 2019, the number of schools in rural areas increased significantly, and that much was done to enrol a number of children with disabilities in inclusive classes. The Committee also notes the Government's reference, to Order No. 367 of 2018, which according to the Government provides for improved access of education to internally displaced children, including: (i) simplified school enrolment; (ii) distance and individual learning; (iii) the possibility to sit the final school examination without enrolment; (iv) access to a higher or professional (vocational) education institution following an independent evaluation; and (v) the possibility to obtain a secondary-education certificate in one year. In this context, the Committee also notes that the Committee on Economic, Social and Cultural Rights (CESCR) in its 2020 concluding observations remains concerned at the regional disparities in access to quality education, with remaining problems in the Donetsk and Luhansk regions. The Committee also notes that the CESCR expresses concern at the persistently high rate of illiteracy among the Roma population, the high dropout rates among Roma children in secondary education, and the under-representation of Roma children in secondary and tertiary education (E/C.12/UKR/CO/7, paragraph 44). ***While noting the measures already taken and the difficult situation prevailing in the country, the Committee strongly encourages the Government to continue to take measures to facilitate access to free basic education for all children, particularly children in areas of armed conflict and internally displaced children, as well as children from the Roma population. It requests the Government to provide information on the concrete results achieved in this respect.***

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

## United Arab Emirates

### Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

*Article 6 of the Convention. Minimum age for admission to apprenticeship*. The Committee previously urged the Government to take the necessary measures to ensure that the draft amended section 42 of the Labour Code was adopted in the very near future to raise the minimum age for admission to apprenticeship from 12 to 15 years as required under the Convention.

The Committee notes with ***satisfaction*** the adoption of Ministerial Decree No. 519 of 2018 concerning the Regulations and Conditions of Training and Employment of Students enclosed with the Government's report which provides that "Any establishment is permitted to recruit students aged 15 years and above during their annual academic holidays, for a period that does not exceed three consecutive months each time" (section 1). Section 3 also provides that training shall not affect children's health or attendance at school and that the employer shall obtain a written consent from the student's parent or legal guardian and that the student shall provide a copy of his/her Emirates identity card as verification of his age, accompanied by a certificate of physical fitness or a declaration from the student's parent to this effect. Lastly, section 4 stipulates that the student shall obtain a no-objection certificate from the educational institute in which he/she is enrolled and that the employer shall conclude a training contract with the trainee clarifying the nature of work, its duration, the student's wage, weekly holiday and the number of daily working hours, which shall not exceed more than six hours per day, interspersed with one hour of rest.

## United Republic of Tanzania

### Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

*Article 1 of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee noted the various measures taken within the framework of the National Action Plan (NAP) for the Elimination of Child Labour, including providing trainings to government officials and other stakeholders and the establishment and reactivation of district child labour committees. The Committee further noted from the findings of the third National Child Labour Survey (NCLS) – the Analytical Report released in January 2016 – that 34.5 per cent of children aged between 5 and 17 are engaged in child labour with agriculture, forestry and fishing industry employing more than 92 per cent of all working children. The Committee observed that 22.1 per cent of children aged 5 to11 years and 36 per cent of children aged 12 to13 were involved in child labour, which amounts to about 2.76 million children in total. Noting with concern that a significant number of children below the minimum age were involved in child labour, the Committee urged the Government to strengthen its efforts to ensure the progressive elimination of child labour, and to continue taking measures to ensure that the NAP was effectively implemented.

The Committee notes the Government's information in its report that the NAP for the Elimination of Child Labour was merged with the NAP on Violence against Women and Children (VAWC). In December 2017, the Government endorsed the National Strategy on Elimination of Child Labour (2018–22) to strengthen the implementation of measures eliminating child labour through the NAP VAWC. According to the Government's information, this strategy has identified issues and interventions that would address child labour at all levels. The Government indicates that the ILO, with the Japan Tobacco International funding, is successfully implementing the Achieving Reduction of Child Labour in Support of Education (ARISE) project to support the Government in implementing the NAP VAWC 2017/18–2021/22.

The Committee also notes the information provided by the Government in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that within the framework of the Promoting Sustainable Practices to Eradicate Child Labour in Tobacco (PROSPER+) project 2016–17, several child labour awareness events in targeted communities involving 9,725 participants were carried out in collaboration with the Tanzania Leaf Tobacco Companies and Alliance One International. Moreover, the Tanzania Social Action Fund Conditional Cash Transfer Program (TASAF CCT) Phase III (2012–2018) which aims to provide financial assistance to vulnerable populations, including children, led to an increase in school enrolment and reduced child labour.

The Committee further notes from the Government's report to the Human Rights Council of February 2016 that the State's collaboration with Plan International and WEKEZA (Supporting Livelihoods and Developing Quality Education to Stop Child Labour) had succeeded in preventing 3,016 children between the ages of 5 and 13 from becoming child labourers, rescuing about 2,232 children from child labour, providing them with school facilities and bringing them back to schools and technical schools. This report also indicates that the State has collaborated with small–scale miners associations and raised awareness on the effects of child labour and the legal prohibitions. This campaign led some villages in the Geita Region to adopt by-laws, which prohibit child employment in mines and agricultural activities (A/HRC/WG.6/25/TZA/1, paragraph 63).

The Committee, however, notes from the ILO report entitled *Child Labour and the Youth Decent Work Deficit in Tanzania*, 2018, that child labour in Tanzania continues to affect an estimated 4.2 million children aged 5 to17 years. Around one in four children aged 5 to 13 years, almost 2.8 million children, are engaged in child labour. Nearly 95 per cent of child labourers are in the agricultural sector, often working for long hours and in hazardous conditions. The Committee finally notes the Government's statement that child labour remains a major challenge to socio-economic development and constitutes a major obstacle to achieving education for all and other developmental goals. The Committee once again expresses its ***concern*** that a significant number of children below the minimum age are still engaged in child labour in Tanzania. ***While noting the measures taken by the Government, the Committee once again urges the Government to strengthen its efforts to ensure the progressive elimination of child labour, including by taking effective and specific measures within the framework of the NAP VAWC as well as through collaborating with PROSPER, Plan International and WEKEZA. It requests the Government to continue to provide information on the measures taken in this regard and the results achieved in terms of progressively eliminating child labour.***

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

*Articles 3(d) and 5 of the Convention. Hazardous work and labour inspection.* In its previous comments, the Committee noted from the analytical report of the National Child Labour Survey (NCLS) of 2014 that children in hazardous work amount to about 3.16 million, which constitutes 62.4 per cent of working children and 21.5 per cent of children aged 5–17 years. The highest proportion of children classified in hazardous work corresponds to those working under hazardous working conditions (87.2 per cent) followed by those working long hours (29 per cent). Carrying of heavy loads is the most common hazard, which involved 65.1 per cent of children in hazardous work. In addition, 46.8 per cent of total children in hazardous work experienced injuries, illness or poor health, which occurred as a result of work. The Committee urged the Government to intensify its efforts to eliminate this worst form of child labour.

The Committee notes that the Government, in its report, refers to various projects on child labour implemented in the country but provides no particular information on the trainings provided to or activities undertaken by the labour inspectors in monitoring hazardous work by children. It notes the Government's statement that children in Tanzania engage in the worst forms of child labour, including in mining, quarrying and domestic work. The Committee notes from the ILO report entitled *Child Labour and the Youth Decent Work Deficit in Tanzania, 2018* that about 41 per cent of children (1,467,000 children) in the age group of 14 to 17 years are involved in hazardous work. This report states that monitoring the implementation of legislation is a major challenge owing to limited resources for inspection. The Committee must once again express its ***deep concern*** at the significant number of children working in hazardous work and conditions. ***The Committee strongly urges the Government to take the necessary measures to strengthen and adapt the capacities of the labour inspectorate to ensure that children under the age of 18 years are not engaged in hazardous work, particularly in mining, quarrying and domestic work. In this regard, the Committee requests the Government to take the necessary measures to promote collaboration between the labour inspectorate and other relevant stakeholders and to provide adequate training to the labour inspectors to detect cases of children engaged in hazardous work and remove them from this worst form of child labour. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

*Article 6. Programmes of action for the elimination of the worst forms of child labour and application of the Convention in practice.* In its previous comments, the Committee noted that in collaboration with the ILO, the Government was implementing a number of programmes, including the National Action Plan for the Elimination of Child Labour (NAP); Achieving Reduction of Child Labour in Support of Education (ARISE) programme with the support of Japan Tobacco International (JTI); and the Promoting Sustainable Practices to Eradicate Child Labour in Tobacco (PROSPER) programme with the support of Winrock International in the tobacco sector. The Committee requested the Government to continue providing information on the implementation of these programmes, and the results achieved in terms of eliminating the worst forms of child labour.

The Committee notes the Government's information on the various awareness raising events, trainings and sensitization events on combating child labour and its worst forms conducted within the framework of the PROSPER project. The Government report also states that it is implementing the Eradicating the Worst Forms of Child Labour (EWFCL) in the Eight Mining Wards of Geita District- Phase 2 (2015–19) project and the ILO Project on Global Research on Child Labour Measurement and Policy Development (MAP) which aims to build critical knowledge and capacity for accelerating progress against child labour by supporting data collection and analysis on child labour and children in hazardous work. ***The Committee encourages the Government to continue taking effective measures to eliminate the worst forms of child labour, in particular hazardous work and to provide information on the results achieved. It requests the Government to provide information on the specific measures taken within the framework of the EWFCL and MAP projects to combat hazardous child labour. It also requests the Government to***

***continue providing statistical information on the nature, extent and trends of the worst forms of child labour, and the number of children covered by the measures giving effect to the Convention.***

*Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee notes from the joint report by the Ministry of Education, Science and Technology and the UNICEF entitled Global Initiative of Out-of-School children-Tanzania Country report, 2018 that a total of 3.9 million children between the ages of 7 and 17 are out of school in Tanzania. Of these, 1.7 million children of primary school age and about 400,000 children of the lower secondary school age never attended any school. The transition rate from primary school to secondary school is 56.3 per cent. The Committee also notes from the UNESCO statistics that the net enrolment rate at the primary level in 2018 is 81.33 per cent while at the secondary level it is 26.55 per cent. The Committee expresses its ***concern*** at the low enrolment rates at the primary and secondary education levels. ***Considering that education is key in preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to take the necessary measures to improve the functioning of the educational system, so as to ensure that all children have access to quality education. In this regard, it requests the Government to strengthen its measures to increase the primary and secondary school enrolment and attendance rates and decrease the drop-out rates and the number of out-of-school children. The Committee asks the Government to provide information on the measures taken in this regard and on the results achieved.***

*Clause (d). Identify and reach out to children at special risk. Children orphaned by HIV/AIDS and other vulnerable children.* The Committee previously noted the Government's information that the Free Education Programme for Primary and Secondary Level Education, which was being implemented, would increase access to educational opportunities for children orphaned by HIV/AIDS. It also noted that the second National Costed Plan of Action for Most Vulnerable Children (NCPA MVC II, 2013–17) called for a government-led and community-driven response to facilitate access of MVCs to adequate care, support, protection and basic social services. In addition, a National MVC Monitoring and Evaluation Plan was adopted in January 2015 to ensure an effective and efficient coordination of MVC programme interventions. Noting from the 2015 UNAIDS estimates on HIV and AIDS, that there remained approximately 790,000 child orphans of HIV/AIDS in Tanzania, the Committee urged the Government to strengthen its efforts to ensure that children orphaned by HIV/AIDS are prevented from being engaged in the worst forms of child labour and are provided with appropriate support and access to education.

The Committee notes that the Government refers to the National Strategy on the Elimination of Child Labour 2018-22, the National Action Plan on Violence against Women and Children (NAP VAWC) 2017-2022 and the Decent Work Country Programme as having measures to address the issues of vulnerable children and the worst forms of child labour. The Committee also notes from the ILO publication entitled *Child Labour and the Youth Decent Work Deficit in Tanzania, 2018* that one of the objectives of the National Strategy on Elimination of Child Labour 2018-22 is to improve access of all vulnerable children to alternative forms of education. Moreover, the NCPA MVC contains a number of intervention strategies designed to positively impact the lives and welfare of the country's most vulnerable children. The Committee, however, notes from the UNAIDS estimates of 2019 for Tanzania that the number of child orphans due to AIDS aged under 17 has reached 860,000. ***Considering that children orphaned by HIV/AIDS are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to continue its efforts to ensure that those children are prevented from being engaged in the worst forms of child labour, in particular by increasing their access to education and vocational training and providing appropriate assistance and support. The Committee requests the Government to provide information on the concrete measures taken within the NAP-VAWC, the NCPA MVC and the DWCP in this regard and the results achieved in terms of the number of orphans and vulnerable children withdrawn from the worst forms of child labour and rehabilitated.***

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

## United States of America

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

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the American Federation of Labour and Congress of Industrial Organizations (AFL–CIO) received on 18 September 2019.

*Articles 4(1), 5 and 7(1) of the Convention. Determination of types of hazardous work, monitoring mechanisms and penalties. Hazardous work in agriculture from 16 years of age.* In its previous comments, the Committee noted that section 213 of the Fair Labour Standards Act (FLSA) permits children aged 16 years and above to undertake, in the agricultural sector, occupations declared to be hazardous or

detrimental to their health or well-being by the Secretary of Labour. The Government, referring to Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), stated that Congress considered it as safe and appropriate for children from the age of 16 years to perform work in the agricultural sector. However, the Committee noted that work in agriculture was found to be "particularly hazardous for the employment of children" by the Secretary of Labour. According to the website of the Occupational Safety and Health Administration (OSHA), agriculture ranked among the most dangerous industries.

The Committee also noted the Government's detailed information concerning the intensification of its efforts to protect young agricultural workers' occupational safety and health. For example, the Wage and Hour Division (WHD) of the Department of Labour (DOL) developed strategy to use education and outreach to promote understanding of agricultural employers' and workers' rights and responsibilities alike. The WHD also strengthened the protection of young workers by making full use of the regulatory tools available to it, including the new "hot goods" provision and the Child Labour Enhanced Penalty Program, which enabled it to impose increased penalties on violators of child labour law. The Committee further noted the Government's statement that the Environmental Protection Agency's Worker Protection Standard (WPS) (40 C.F.R. Part 170) was revised to prohibit children under 18 from handling agricultural pesticides. The Committee encouraged the Government to continue taking measures to ensure that children under 18 years of age only be permitted to perform work in agriculture on the condition that their health and safety are protected and that they receive adequate specific instruction.

The Committee notes that the AFL–CIO indicates in its observations that there have not been significant improvements to the laws, related work rules or their enforcement. According to the report entitled "Working Children: Federal Injury Data and Compliance Strategies Could be Strengthened" published by the US Government Accountability Office in November 2018, while 5.5 per cent of working children toiled on farms, agriculture was responsible for more than half of child occupational deaths. Between 2003 and 2016, 237 children died in farm-related work accidents, representing four times the number of deaths of any other sector. The AFL–CIO also states that the DOL found only 34 violations per year over a several year period and that the extremely low number of violations detected shows the weak enforcement. The AFL–CIO further indicates that, according to the Farm Labour Organizing Committee (FLOC) reports, there are still children under 16 years of age doing hazardous work in the tobacco fields. The failure to update the Agricultural Hazardous Occupations Orders means that the DOL plays no role in enforcing minimum work ages (except for the age of 12 which is still legally the minimum age across agriculture).

The Committee notes the Government's information in its report that the amendment of the Environmental Protection Agency (EPA)'s Worker Protection Standard (WPS), which prohibits pesticide usage by young workers under 18 years of age (except for those in the immediate family of the farmer), came into effect in January 2017. The Government indicates that OSHA and the WHD continue to conduct extensive outreach and education campaigns to ensure that young workers are aware of their rights, have accurate safety information and know where to find helpful resources. The WHD also conducts numerous investigations during the reporting period. When violations occur, the WHD pursues effective penalties and resolutions to protect young workers. The Committee also notes the supplementary information provided by the Government in 2020, according to which, in 2019, the WHD found child labour violations in 858 concluded cases. In those cases, WHD found that 3,073 minors were working in violation of the Fair Labour Standards Act. In 240 of the cases, violations of Hazardous Occupation Orders (HOs) were found, with a total of 544 minors employed in violation of HOs. The most common violations often involve the failure to comply with the hours standards for 14- and 15-year-olds in non-agricultural industries, and the failure to comply with HOs in non-agricultural industries for 16- and 17-year-olds. The Committee observes that the above information only concerns violations of HOs in non-agricultural industries.

The Committee also notes the Government's reference to the surveys related to children working in agriculture carried out by the National Institute for Occupational Safety and Health (NIOSH). According to the report "Young Worker Injury Deaths: A Historical Summary of Surveillance and Investigative Findings" published in 2017, agriculture production is ranked as the sector with both the highest fatality number (389 deaths) for all youth under 18 and the highest fatality rate (19.7 per cent) for youth aged 15–17 from 1994 to 2013 (page 16). Between 1982 and 2010, there were 31 investigations conducted by the State Fatality Assessment and Control Evaluation (FACE) for youth fatalities that occurred in the agriculture production industry. In almost half of the 31 investigations, the youth was working in a business owned by a family member; and in 14 investigations, the employer was reported to be the youth's parent or guardian. Documentation of formal training was rare, with two of the 31 investigated fatalities reporting that the youth received formal training. Moreover, most of the 31 investigated fatalities occurred on operations not covered by child labour regulations or on operations where coverage could not be determined (pages 57–58). In addition, according to the 2019 Fact Sheet on Childhood Agricultural Injuries in the US, from 2001 to 2015, 48 per cent of all fatal injuries to young workers occurred in agriculture. Since 2009, the number of youth worker fatalities in agriculture has been higher than in all other industries

combined. In 2016, young workers were 7.8 times more likely to be fatally injured in agriculture when compared to all other industries combined. Transportation incidents were the most common fatal event, with tractors and all-terrain vehicles (ATVs) as the primary vehicle sources.

While taking note of the measures taken by the Government to protect the health and safety of young persons working in agriculture, the Committee must note with ***concern*** that a significant number of children under 18 years still suffer injuries, some serious, while engaged in farm work. Moreover, the statistical information shows that agriculture production remains the most dangerous sector for children, with the highest number of fatal injuries, especially for those who work for family-owned businesses or perform operations not covered by child labour regulations. In this regard, the Committee once again recalls that work which, by its nature or the circumstances in which it is carried out was likely to harm the health, safety or morals of children, constitutes one of the worst forms of child labour and, therefore, Member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. While *Article 4(1)* of the Convention allows the types of hazardous work to be determined by national laws or regulations or the competent authority, after consultation with the social partners, the Committee notes that in practice, the agricultural sector, which is not on the list of hazardous types of work, remains an industry that is particularly hazardous to young persons. ***The Committee therefore urges the Government to strengthen its efforts to ensure that children under 18 years of age only be permitted to perform work in agriculture on the condition that their health and safety are protected and that they receive adequate specific instruction. It also requests the Government to take the necessary measures to ensure that the child labour regulations apply to all children working in agriculture, and to strengthen the capacity of the institutions responsible for the monitoring of child labour in agriculture, to protect child agricultural workers from hazardous work. The Committee further requests the Government to continue providing detailed statistical information on child labour in agriculture, including the number of work-related injuries of children working in agriculture, as well as the extent and nature of child labour violations detected, investigations carried out, prosecutions, convictions and penalties applied.***

## Bolivarian Republic of Venezuela

### Minimum Age Convention, 1973 (No. 138) (ratification: 1987)

The Committee proceeded with the examination of the application of the Convention on the basis of the observations received from the Confederation of Workers of Venezuela (CTV) on 11 December 2019; the Federation of University Teachers' Associations of Venezuela (FAPUV) and the Independent Trade Union Alliance Confederation of Workers (CTASI) on 15 September 2020; and the FAPUV on 30 September 2020, as well as on the basis of the information at its disposal in 2019. ***The Committee requests the Government to reply to these observations.***

*Article 1 of the Convention. National policy, labour inspection and application of the Convention in practice.* In its previous comments, the Committee requested the Government to provide information on the penalties imposed for infringements recorded by labour inspectors. It once again requested it to take the necessary steps as soon as possible to ensure that up-to-date statistics on the situation of children and young persons who are working in the country, particularly in hazardous work and the informal economy, are made available. The Committee also requested the Government to provide information on the national measures and policies adopted or contemplated to ensure that all children and young persons, including in the informal economy, benefit from the protection granted by the provisions of the Convention.

The Committee notes in the Government's report that the supervisory units monitor the application of section 32 of the Basic Act on labour and workers, which lays down the prohibition of the engagement in labour of children under 14 years. Of a total of 18,141 inspections conducted between 2016 and 2018, two cases of child labour were detected, regarding adolescents working with their parents in agriculture. Given that corrective measures were implemented by the employers on those occasions, the Government did not initiate a procedure to impose penalties against them. In that regard, the Committee notes that, in its observations, the CTV expresses concern at the low number of cases of child labour detected which, in its views, does not reflect an appropriate enforcement of section 32 of the Basic Act on labour and workers by the Government.

The Committee notes that the national system of guidance for the comprehensive protection of children and young persons is made up of several action programmes in coordination with the national education system and the national health system, and also notes the national systems entitled "Missions" and "Great Missions". It notes the inter-ministerial cooperation agreement signed in 2018, between the People's Ministry for the Social Process of Labour and the Independent Institute of the National Committee for the Rights of Children and Adolescents, aimed at strengthening the monitoring of working conditions of adolescents under the age of 18. This agreement establishes a system of coordination

among institutions based on a digital platform, in order to record data related on labour performed by young persons under 18 years.

The Committee notes the number of young persons registered during labour inspections between 2016 and 2018. In 2016, of the 10,076 inspections led, 2,139 cases of adolescents at work were detected (950 girls and 1,189 boys); in 2017, of the 14,691 inspections conducted, 1,879 cases of adolescents at work were detected (887 girls and 992 boys) and in 2018, of the 24,465 inspections conducted, 1,684 cases of adolescents at work were detected (721 girls and 963 boys). The Government underlines in its report that during inspections, no cases were identified of child or adolescent victims of the worst forms of child labour.

The Committee notes that, according to the Government, the children subjected to labour in the informal economy, specifically hawking in open-air markets, popular markets or other places of informal trade activities, are monitored through different programmes led by the Municipal Councils for Children's and Young Persons' Rights and by the Children's and Young Persons' Protection Councils. In addition, checks on the working conditions of self-employed workers have been incorporated by the People's Ministry for the Social Process of Labour into the Comprehensive Programme for Agricultural Inspection. This Programme monitors the participation of children and young persons in the informal economy, including their working hours and the consequences of this type of work on their school attendance. According to the Government's information, of the 446 inspections carried out in family agriculture, child labour does not exceed ten hours and does not interfere with their school attendance. The Committee however notes that, in their observations, the CTV, FAPUV and CTASI express concern about the lack of statistical information available on the number of children engaged in child labour in the informal economy, thus impeding an appropriate assessment of the magnitude of this phenomenon which is increasing, as well as of the implementation of the Convention. Furthermore, in FAPUV and CTASI's views, child labour seriously interferes with the school attendance of children and young persons. In that regard, the Committee notes that, in its observations, the CTV highlights that, in 2018, the drop-out rate from school was estimated at 58 per cent and is still increasing. ***The Committee requests the Government to provide updated statistical information on the number of children and adolescents working in the country, including in hazardous work and the informal economy, and information on the number and nature of the infringements detected by labour inspectors, and the penalties imposed in this regard. The Committee also requests the Government to provide detailed information on the actions undertaken and results obtained within the framework of the various programmes, such as the programmes led by the Municipal Councils for Children's and Young Persons' Rights and the Children's and Young Persons' Protection Councils, which monitor the children involved in informal economy activities, and the action programmes in coordination with the national education system and the national health system, and the national systems entitled "Missions" and "Great Missions", as well as on their impact on the school attendance and completion rates of children and young persons.***

*Article 3(3). Admission to hazardous work from the age of 16 years.* In its previous comments, the Committee once again requested the Government to take the necessary measures as soon as possible to bring its national legislation into conformity with the Convention, ensuring that any exceptions to the prohibition on hazardous work authorized by the Act of 1998 concerning the protection of children and young persons, only apply to young persons between 16 and 18 years of age and only under the conditions laid down in *Article 3(3)* of the Convention.

The Committee notes that the Government once again highlights that its legislation prohibits all forms of hazardous work to children under 18 years. It also indicates that sections 78 and 89 of the 1999 Constitution of Venezuela and sections 18 and 96 of the Act of 1998 concerning the protection of children and young persons are in line with the 2012 Basic Act on labour and workers. In that regard, the Committee notes that, in CTV's views, such provisions are not implemented in practice.

Furthermore, even though the Regulations on Occupational Health and Safety of 1973 prohibit hazardous or unhealthy activities to young persons under 18 years, the Committee once again emphasizes that under the terms of section 96 of the Act of 1998 concerning the protection of children and young persons, the national executive authority may determine minimum ages higher than 14 years for types of work that are hazardous or harmful to the health of young persons. Further, the Committee once again recalls that the employment of young persons between 16 and 18 years in hazardous work is only authorized subject to the application of strict conditions which ensure their protection and the provision of prior training and is never authorized for young persons under 16 years of age. ***The Committee once again requests that the Government take the necessary measures as soon as possible to bring its national legislation into conformity with the Convention, ensuring that any exceptions to the prohibition on hazardous work authorized by the Act of 1998 concerning the protection of children and young persons, only apply to young persons between 16 and 18 years of age and only under the conditions laid down in Article 3(3) of the Convention.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## **Worst Forms of Child Labour Convention, 1999 (No. 182)** (ratification: 2005)

The Committee proceeded with the examination of the application of the Convention on the basis of the observations received from the Federation of University Teachers' Associations of Venezuela (FAPUV) and the Independent Trade Union Alliance Confederation of Workers (CTASI) on 15 September 2020; the CTASI on 30 September 2020; and the FAPUV on 30 September 2020, as well as on the basis of the information at its disposal in 2019. ***The Committee requests the Government to reply to these observations.***

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children; and penalties.* In its previous comments, the Committee noted with concern the impunity which appeared to exist in Venezuela for the perpetrators of the crime of child trafficking. The Committee requested the Government to intensify its efforts to combat such impunity. It requested the Government to supply information on the number of convictions handed down and penalties imposed against the perpetrators of these crimes. It also requested it to provide information on the progress made regarding the adoption of the draft bill against trafficking in persons.

The Committee notes in the Government's report the activities carried out by the National Office against Organized Crime and the Funding of Terrorism (ONCDOFT) relating to the prevention of trafficking in persons and smuggling of migrants. Several awareness-raising activities have been carried out in communities and public education institutions at the national level, as well as activities to disseminate information on organized crime and its risks.

The Committee notes that the draft bill against trafficking in persons has not yet been adopted. However, the Government states that sections 41 and 42 of the Act of 2012 against organized crime and the funding of terrorism strengthened the penalties for violations related to the sale and trafficking of children and young persons for forced labour or sexual exploitation, and the illegal transport of persons within and outside the country.

In addition, the Committee takes note of the statistics provided by ONCDOFT on judicial proceedings brought against the perpetrators of trafficking in persons between 2015 and 2018. In 2015, 24 persons were prosecuted (13 men and 11 women); in 2016, 46 persons were prosecuted (22 men and 24 women); in 2017, 32 persons were prosecuted (12 men and 20 women) and lastly, in 2018, 131 persons were prosecuted (63 men and 68 women). The Committee notes that the data provided does not indicate whether any of these prosecutions concern children under 18 years of age. ***The Committee requests the Government to continue to provide information on the adoption process of the draft bill against trafficking in persons. The Committee once again requests the Government to supply detailed information on the complaints filed, convictions handed down and penalties imposed under sections 41 and 42 of the Act against organized crime, indicating those cases involving victims below 18 years of age. As far as possible, this information should be disaggregated by age and gender.***

*Articles 3 and 7(2). Worst forms of child labour and effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in, and removing children from, the worst forms of child labour, and ensuring their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* In its previous comments, the Committee requested the Government to take effective measures to remove children from trafficking and sexual exploitation and ensure their rehabilitation and social integration. It requested the Government to provide information on the results achieved through the various plans which had been implemented and on the number of child victims of trafficking and sexual exploitation who had been the beneficiaries of these measures.

The Committee takes note, according to the Government's report, that public servants have participated in a workshop on criminal investigations into cases of trafficking in persons, focused on the prevention of migrant trafficking and smuggling, early detection of potential victims, identification of traffickers, recording of information gathered, an appropriate criminal investigation process and the distinction between trafficking in persons and smuggling of migrants. A national network against organized crime and funding of terrorism has been developed by the Government, represented in each province of the country. This network is organized into 24 coordination units which carry out prevention activities and coordinate the various national competent entities regarding operations for the monitoring, repression and follow-up of crimes of trafficking in persons and migrant smuggling. In 2018, the Government also provided training and capacity-building for public servants at key border control locations. This training course, entitled "Border Trafficking Route", focuses on preventive measures and the implementation of control mechanisms to combat trafficking in persons and smuggling of migrants, and on the identification of potential victims and support measures for them.

The Committee also notes that the Office of the Ombudsman, together with UNICEF, has renewed the national training plan on the rights of trafficking victims, especially women, children and young persons. The implementation of this plan falls within the mandate of the Office of the Ombudsman to promote, defend and monitor human rights, and involves the participation of all institutional bodies in the country devoted to the issue of trafficking in persons and smuggling of migrants.

Further, the Committee notes that under the national system of guidance for the comprehensive protection of children and young persons, within the framework of the 2015 Act on the protection of children and young persons (section 117), programmes are implemented for the rehabilitation of children and young persons who are victims of exploitation or abuse. Prevention programmes are also in place to prevent children and young persons from being subjected to such exploitive situations.

The Committee notes, from the Government's report, the current revision by ONCDOFT of the protocol for assistance to victims of trafficking. While noting the various actions undertaken by the Government to combat trafficking and sexual exploitation for commercial purposes, the Committee once again expresses its ***regret*** at the lack of information provided by the Government on the results achieved by these programmes. ***The Committee once again requests the Government to provide information on the results achieved through the various plans that have been implemented and on the number of child victims of trafficking and sexual exploitation who have been the beneficiaries of these measures. The Committee also requests the government to supply information on the ONCDOFT protocol for assistance to victims of trafficking, once it has been revised.***

*Article 3(d). Children engaged in hazardous mining activities.* The Committee notes that, in their observations, the FAPUV and CTASI express specific concerns about cases of children engaged in illegal mining activities in the state of Bolívar, in particular in "*Arco Minero del Orinoco*" (AMO), to which children from indigenous communities are particularly exposed. ***The Committee requests the Government to provide information on the effective and time-bound measures taken to prevent children from engaging in hazardous mining activities, to remove them from these activities and to provide them with rehabilitation services.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Viet Nam

### Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

*Article 9(1) of the Convention. Penalties, labour inspectorate and application of the Convention in practice.* In its previous comments, the Committee noted that administrative sanctions for child labour are provided for by several decrees. Moreover, section 296 of the Penal Code of 2015 provides for criminal liability for violations of the law on the employment of children. However, the Committee noted that a significant number of children were engaged in child labour in Viet Nam, and that the results of the labour inspection activities did not reflect the magnitude of child labour in Viet Nam, as indicated in the report of the Viet Nam National Child Labour Survey of 2012. The Committee also noted that the Government was in the process of preparing the second National Survey on Child Labour. The Committee urged the Government to strengthen the capacity and expand the reach of the labour inspectorate in its action to prevent and combat child labour. It also requested the Government to continue to provide information on the manner in which the Convention was applied in practice.

The Committee notes the Government's information in its report that there are no cases of child labour detected during the labour inspection activities. However, according to information provided by 30 authorities at provincial and city level, 83 children who perform work illegally were detected. The Government also indicates that 120 labour inspectors from 63 Department of Labour, Invalids and Social Affairs our have participated in capacity building activities on child labour. Training contents included relevant laws, inspection process and skills in inspecting the use of child labour. In addition, 286 inspectors at the local level received training on the detection, inspection and examination of child labour. The Committee also notes that, according to the National Child Labour Survey 2018, 1,031,944 working children were classified as involved in "child labour", accounting for 5.4 per cent of the 5-17 year-old population and 58.8 per cent of working children. Among these, 519,805 children worked in heavy, dangerous and hazardous work with a rate of nearly 50.4 per cent of the total number of children in child labour. The Committee takes due note that, the total number of children involved in child labour has decreased compared with the results of the National Child Labour Survey 2012 (1.75 million). However, it notes with ***concern*** that there is still a significant number of children engaged in child labour, particularly in hazardous work. Moreover, the Committee observes that the results of the labour inspection activities do not reflect the magnitude of child labour in Viet Nam, as indicated in the report of the Viet Nam National Child Labour Survey of 2018. ***The Committee therefore urges the Government to intensify its efforts to ensure the effective elimination of child labour. It once again urges the Government to strengthen the capacity and expand the reach of the labour inspectorate in its action to detect, monitor, prevent and combat child labour, and to provide detailed information on the measures taken in this regard. The Committee also requests the Government to continue to provide information on the manner in which the Convention is applied in practice, including extracts from the reports of the inspection services and court decisions, as well as information on the number and nature of the violations reported and the sanctions imposed.***

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

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

*Article 3(b) of the Convention. Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.* The Committee previously noted the Government's information on the implementation of the Programme of Action to Combat Prostitution (PACP) 2011–2015. However, no concrete information on specific measures targeting child prostitution was provided in the Government's report. The Committee also noted that, according to section 147 of the 2015 Criminal Code, persuading, enticing and forcing a person under 16 years of age to participate in a pornographic performance constituted an offence. However, the provisions of the 2015 Criminal Code did not appear to prohibit the use, procuring or offering of a child aged 16–18 for the production of pornography or for pornographic performances. The Committee therefore urged the Government to take the necessary measures to ensure that the use, procuring or offering of a child under 18 years for the production of pornography or for pornographic performances was prohibited. It also requested the Government to provide information on the targeted measures undertaken to combat the commercial sexual exploitation of children under 18 years of age, as well as on the results achieved.

The Committee notes the Government's information in its report that the PACP 2016–2020 has been adopted and implemented with measures to eliminate prostitution, including prostitution of children under 18 years of age. The Government also indicates that Viet Nam signed up to the statements of actions against the use of the internet for the sexual exploitation of children at the 2014 Summit in London, aimed at tackling online child sexual exploitation. The Committee also notes that, according to the statistical information provided by the Government, from 2016 to 2018, the authorities detected and prosecuted a large number of persons violating regulations on prostitution, including six persons who were punished under the criminal law for buying sex from children. During the first six months of 2019, four cases involving the purchase of sex from persons under 18 years of age were recorded, of which two were referred to the People's Prosecutor's Office. The Government also refers to the arrest and extradition of a US citizen to the US authorities, who was prosecuted for the crime of "receipt and distribution of child pornography" and "keeping child pornography".

While taking note of the measures undertaken by the Government, the Committee once again reminds the Government that, by virtue of *Article 3(b)* of the Convention, the use, procuring or offering of a child under *18 years* for the production of pornography or for pornographic performances, is considered as one of the worst forms of child labour, while section 147 of the Criminal Code only punishes persuading, enticing and forcing a person under *16 years* to participate in a pornographic performance. ***The Committee therefore strongly urges the Government to take the necessary measures to ensure that the use, procuring or offering of a child under 18 years for the production of pornography or for pornographic performances is prohibited, by amending section 147 of the 2015 Criminal Code, and to provide information on any progress made in this regard. The Committee also requests the Government to continue to provide information on the targeted measures undertaken to combat the commercial sexual exploitation of children under 18 years of age, as well as on the results achieved, including the number of persons arrested, prosecuted and sentenced for the commercial sexual exploitation of children, as well as the penalties imposed.***

*Article 7(2)(b). Effective and time-bound measures to provide assistance for the removal of children in the worst forms of child labour and for their rehabilitation and social integration. Child victims of commercial sexual exploitation.* The Committee previously noted that the Committee on the Rights of the Child (CRC) expressed its concern about the increasing number of children involved in commercial sexual activity. The CRC also expressed its concern that children who were sexually exploited were likely to be treated as criminals by the police, and that there was a lack of specific child-friendly reporting procedures. The Committee requested the Government to provide concrete information on the effective and time-bound measures taken to remove children from commercial sexual exploitation and to provide them with the appropriate assistance for their social integration.

The Committee notes the Government's information that, from 2016 to 2018, there were 113 persons under 18 years of age among 13,341 documented persons engaged in prostitution. The Government also indicates that three persons under 18 years of age who were engaged in prostitution were detected during police activities, of which one received punishment. In the first six months of 2019, four persons under 18 years of age were found engaged in prostitution, of which three received administrative penalties. The Government further indicates that, as reported by the Supreme People's Prosecutor's Office, the number of children engaged in prostitution increased during the first six months of 2019, with many children of ethnic minorities, living in remote areas or in difficult circumstances. The Committee also notes that Decree No. 56/2017/ND-CP was adopted in September 2017 to implement some provisions of the 2016 Child Law regarding child abuse, including sexual abuse. The Decree also provides that children in special circumstances, including sexually abused children, are entitled to healthcare, social assistance, education and vocational training assistance, legal assistance, psychological counselling, and other child protection services. In 2017–18, 48.28 per cent of the sexually abused children were provided with

psychological assistance; 15.96 per cent of the children were provided with social assistance; 9.41 per cent of the children were provided with healthcare; 6.27 per cent were provided with legal assistance; 1.57 per cent were provided with assistance in education and vocational training; and 3.53 per cent were provided with other child protection services. However, the Committee observes that it is not clear whether the sexually abused children are victims of commercial sexual exploitation.

Noting that several persons under 18 years received administrative penalties for their engagement in prostitution, the Committee must emphasize that children who are used, procured or offered for prostitution should be treated as victims, and not as offenders (see the 2012 General Survey on the fundamental Conventions, paragraph 510). ***The Committee therefore requests the Government to take the necessary measures to ensure that children engaged in prostitution are treated as victims rather than offenders and therefore are not punished for their engagement in prostitution, and that they receive the services necessary for their rehabilitation and social integration. It also requests the Government to provide information on any progress made or results achieved in this regard, including the training provided to relevant authorities dealing with prostitution, as well as the number of children identified as victims of commercial sexual exploitation and provided with assistance for their rehabilitation and social integration, through education, vocational training or jobs. The Committee finally requests the Government to clarify the definition of sexual abuse under the 2016 Child Law and to ensure that the information provided reflects the situation of child victims of commercial sexual exploitation, including prostitution.***

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

## Zimbabwe

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) received on 31 August 2019 and 29 September 2020, respectively.

*Articles 1 and 2(1) of the Convention.* 1. *National policy, scope of application and application of the Convention in practice.* In its previous comments, the Committee noted the Government's statement that it continued to pursue its efforts to reintegrate children through the National Action Plan for Orphans and other Vulnerable Children (NAP-OVC) and the Basic Education Assistance Module (BEAM). However, it noted from the 2014 Child Labour Report of the Zimbabwe National Statistics Agency that 1.6 million children in the age group of 5–14 years were involved in some form of economic activity. More than 2.7 million children of this age group were engaged in non-economic activities or unpaid work. This report also indicated that paid child labour was more prevalent in the agricultural, forestry and fishing sectors. The Committee also noted that the Committee on the Rights of the Child (CRC), in its concluding observations of March 2016, expressed concern at the persistence of child labour, including hazardous work, and at the exploitation of children, particularly from low-income households, in the informal economy, including low payment of wages and long working hours (CRC/C/ZWE/CO/2, paragraph 72). The Committee urged the Government to strengthen its efforts to ensure the progressive elimination of child labour in all sectors.

The Committee notes the observations of the ZCTU that child labour, including hazardous work, is still high particularly in the informal economy, domestic service, mining, agriculture and tobacco farms. Children as young as 12 years are employed in farming. The ZCTU states that the child labour situation has been worsened due to the poor socio-economic conditions and that the Government has failed in implementing its previous plan of action developed in this regard.

The Committee notes the Government's information in its report that BEAM, one of the numerous forms of social protection measures, is being implemented to reach out to children who have never been to school due to social and economic constraints. The Committee notes the Government's information in its supplementary report that in 2018, 415,000 and in 2019 583,547 orphans and vulnerable children have been supported with educational assistance through BEAM, respectively. This project aims to support a targeted 1,200,000 orphans and vulnerable children in 2020 for which the Government has increased the budgetary allocation to 450 million Zimbabwean dollars. The Government also indicates that the Ministry of Public Service, Labour and Social Welfare undertook a country-wide labour inspection initiative from April to July 2018. This initiative enabled all labour inspectors to visit workplaces and check compliance with the Labour Act, including child labour. The Government also indicates that it is in the process of formalizing the informal sector which would assist in reducing decent work deficits as well as child labour in the informal sector. The Committee further notes the information provided by the Government in its joint report of 2019 on the Labour Inspection Convention, 1947 (No.81) and the Labour Inspection (Agriculture) Convention, 1969 (No.129) that apart from the 120 Government labour inspectors that conduct inspections in the agricultural industry, the National Employment Council (NEC) for the

Agricultural Industry also conducts inspections throughout the country. The NEC for Agriculture which has eight designated agents spread across the country, has carried out 301 labour inspections for the period from January to June 2019.

The Committee further notes from the National Action Plan for Orphans and Vulnerable Children Phase III, 2016–2020 (NAP-OVC) document that this framework will guide the activities of all stakeholders who are engaged in implementing coordinated interventions aimed at assisting children to meet their needs, fulfil their rights and ensure their protection from exploitation. The Committee, however, notes from the Government's report that according to the findings of the Labour Force and Child Labour Survey of 2019, out of the 4.2 million children aged between 5-14 years, about one per cent of children are estimated to be in child labour with more boys engaged in child labour than girls. The survey report published in 2020 indicates that a greater proportion of children involved in child labour were in agriculture, forestry and fishing industry and the retail trade industry. The report also indicates that child labour is more prevalent among children aged between 10-14 years and that about three per cent of the children had never been to school while a quarter had dropped out-of-school. ***Noting that a significant number of children are engaged in child labour, the Committee once again urges the Government to strengthen its efforts to ensure the progressive elimination of child labour, including through the effective implementation of BEAM and the NAP-OVC. It requests the Government to provide information on the measures taken in this regard and on their impact in eliminating child labour. The Committee also requests the Government to continue to provide information on the labour inspection services undertaken by the labour inspectors and the NEC for Agriculture with regard to child labour and the number and nature of violations detected, including in the agricultural sector. In this regard, the Committee requests the Government to take the necessary measures to reinforce the capacities of the labour inspection services of the labour inspectorate and the NEC for Agriculture so as to enable them to adequately monitor and detect cases of child labour, including in the informal economy.***

2. *Minimum age*. The Committee notes the Government's information that the minimum age for entry into employment has been raised from 15 to 16 years. The Committee accordingly notes that section 11(a)(ii) of the Labour Act as amended by section 3 of the Labour Amendment Act of 2015 stipulates that no employer shall employ any person who is under the age of 16 years in any occupation. ***The Committee encourages the Government to take the necessary measures to raise the minimum age for admission to employment or work from 14 years (initially specified) to 16 years. In this regard, the Committee requests the Government to consider the possibility of sending a new declaration under Article 2(2) of the Convention thereby notifying the Director-General of the ILO that it has raised the minimum age that it had previously specified.***

*Article 2(3). Age of completion of compulsory schooling*. In its previous comments, the Committee noted the Government's information that primary education, which extends up to nine years, shall be completed at the age of 12 years. It also noted the Government's information that various measures have been implemented, including: (i)the school feeding programme; (ii) non-formal education for school drop-outs; and (iii) a reduction in the cost of education which ensured school enrolment of children, their retention and completion of education and which addressed the issue of school drop-outs at all levels. However, noting that the age of completion of compulsory schooling was less than the minimum age for admission to employment, the Committee requested the Government to consider raising the age of completion of compulsory education so as to link it with the minimum age of 14 years for admission to employment or work**.**

The Committee notes with ***regret*** that the Government has not taken any legal measures in this regard. It notes the Government's information that the Ministry of Primary and Secondary Education has not fixed any age for the completion of compulsory schooling. The Committee once again draws the Government's attention to the necessity of linking the age of completion of compulsory schooling with the minimum age for admission to work, as provided for under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). If compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (see General Survey of 2012 on the fundamental Conventions, paragraph 371). ***The Committee therefore urges the Government to take the necessary measures to raise the age of completion of compulsory education so as to link it with the minimum age for admission to employment or work which is 16 years in accordance with the Labour Amendment Act of 2015. It requests the Government to provide information on any measures taken in this regard.***

*Article 7(3). Determination of light work.* The Committee previously noted that according to section 3(4) of the Labour Relations Regulations, children over 13 years of age may perform light work where such work is an integral part of a course of education or training and does not prejudice their education, health and safety. The Government stated that the Statutory Instrument 155 of 1999 giving the schedule of light work would be revised during the process of the labour law reform. The Committee requested the Government to provide information on any progress made in this regard.

The Committee notes the Government's indication that the labour law reform is ongoing and once the amendments have been enacted, the process of revising the provisions of the Statutory Instrument 155 of 1999 on the types of light work activities, will be undertaken. ***The Committee therefore once again expresses the firm hope that the list of types of light work that may be performed by children from the age of 13 years will be revised and adopted in the near future. It requests the Government to provide information on any progress made in this regard.***

## Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) received on 31 August 2019 and 29 September 2020, respectively.

*Article 4(3) of the Convention. Periodic examination of the list of hazardous work.* The Committee previously noted the Government's indication that following the adoption of the Labour Amendment Act of 2015, focus would be given to the revision of its supporting regulations, including the list of the types of hazardous work.

The Committee notes the Government's information in its report that the amendments to the Labour Act are still ongoing and that once the draft Bill is adopted, the Ministry of Public Service, Labour and Social Welfare will proceed to revise the list of types of hazardous work. ***Observing that the Government has been referring to the revision of the list of types of hazardous work since 2003, the Committee once again urges the Government to take the necessary measures to ensure that the list of types of hazardous work prohibited to children under the age of 18 years is revised, adopted and enforced, in the near future. It requests the Government to provide information on any progress made in this regard.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* In its previous comments, the Committee noted the Government's information that it had been implementing the Basic Education Assistance Module (BEAM) as well as the School Feeding Programme in order to ensure that vulnerable children are able to go to school and to ensure their attendance and retention in schools. The Committee noted, however, from the UNESCO *Education For All National Review 2015*, Zimbabwe, that while school enrolments remained relatively high, about 30 per cent of the approximately 3 million children enrolled in primary school did not complete the seven-year primary cycle. This report also indicated that the Government efforts were far from meeting the needs of about 1 million children who belonged to poor and disadvantaged families. The Committee urged the Government to strengthen its efforts to ensure access to free basic education to all children, particularly children from poor and disadvantaged families.

The Committee notes the Government's information that it continues to strengthen the School Feeding Programme (SFP) which is currently being implemented in more than 70 per cent of the total number of registered schools in the country. The Government also indicates that the SFP has been linked with the Food Deficit Mitigation Programme as a sustainable support measure towards food provision to children in primary schools. It further notes the Government's information that in 2019, the Government allocated 63 million dollars for the implementation of the BEAM. According to the Government's report, the BEAM programme targets in particular, school-going children from poor households, child-headed households, orphans and children neglected by parents, children who have never been to school, and children who have dropped out of school or have failed to pay fees and levies due to poverty. The Committee, however, notes the Government's statement that although numerous efforts are being made towards ensuring children's access to education and enhancing the completion of basic education, financial resources remain a gap due to the economic challenges facing the Zimbabwean State as a whole.

The Committee notes that according to the findings of the UNICEF 2019 Multiple Indicator Cluster Survey of Zimbabwe, the percentage of children of school-going age who enter the first grade of primary education is 67.6 per cent and their net attendance ratio is 90.5 per cent. The percentage of children of primary school age, lower secondary school age and upper secondary school age not attending any school is 4.7 per cent, 23.6 per cent and 70.3 per cent respectively. The Committee also notes that the Committee on the Elimination of Discrimination Against Women (CEDAW), in its concluding observations of 10 March 2020 expressed its concern at the high school-dropout rates among girls (CEDAW/C/ZWE/CO/6, paragraph 35). While noting the measures taken by the Government, the Committee must express its ***concern*** at the high number of children who are not attending any school. ***Considering that education is key in preventing the engagement of children in the worst forms of child labour, the Committee once again urges the Government to strengthen its efforts to ensure access to free basic education to all children, particularly girls and children from poor and disadvantaged families, including through the BEAM project, the School Feeding Programme or otherwise. It also requests the Government to provide information on the concrete measures taken in this regard, particularly with respect to addressing the financial barriers to education, with a view to increasing school attendance rates and reducing drop-out rates.***

*Clauses (a) and (b). Preventing children from engaging in and removing them from the worst forms of child labour, and ensuring their rehabilitation and social integration.* 1. *Children engaged in hazardous work in tobacco farms.* The Committee notes the observations of the ZCTU that children working in tobacco farms are involved in hazardous work and exposed to hazardous conditions which affects their health and disrupts their education. The Committee also notes a report provided by the ZCTU on a tripartite study conducted in June 2020 on child labour in the tobacco industry by the Ministry of Labour with the participation of the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ), ZCTU and the Employers Confederation. According to the findings of this study, children working in tobacco farms work for long hours, carry heavy weights and are exposed to extreme weather conditions and harmful chemicals such as nicotine and pesticides. The Committee also notes the Government's information in its supplementary report that the report on the survey on Child Labour in Tobacco Sector conducted in March 2019 is being validated by the stakeholders which will be followed by dissemination and post survey interventions in the four provinces where the survey was conducted. The Government further indicates that this report is also intended to educate the general public of the dangers associated with child labour in these areas as well as to provide targeted interventions and strategies in the eradication of child labour in this sector. ***The Committee urges the Government to take the necessary measures to ensure that children under 18 years of age are not engaged in hazardous work in tobacco farms and to take effective and time-bound measures to remove them from such work and to provide for their rehabilitation and reintegration. The Committee requests the Government to provide information on the measures taken in this regard and on the results achieved. It further requests the Government to supply a copy of the findings of the survey on child labour in the tobacco sector, once available.***

2. *Children engaged in hazardous work in the mining sector*. In its previous comments, the Committee noted the ZCTU's statement that one of the worst forms of child labour most common in Zimbabwe was work in the mining sector, where children scavenge for minerals to survive. It also noted that 67 per cent of children working in this sector use chemicals (including mercury, cyanide and explosives), and approximately 24 per cent of these children work for more than nine hours a day. The Government indicated that the Ministry of Mines and Mining Development was working together with the law enforcement bodies to remove children from illegal mining activities.

The Committee notes the Government's statement that the statistics of children removed from illegal mining are currently not available and that they shall be provided once they are obtained. In this regard, the Committee notes the observations made by the ZCTU that hazardous child labour is still high in the mining sector. ***The Committee therefore urges the Government to take effective and time bound measures to prevent the engagement of children in hazardous work in the mining sector, and to provide for their removal and subsequent rehabilitation and social integration. It also requests the Government to provide information on the number of children removed from illegal mining activities by the Ministry of Mines and Mining Development and provided assistance for rehabilitation and reintegration.***

*Clause (d). Identify and reach out to children at special risk. Orphans of HIV/AIDS and other vulnerable children (OVC).* In its previous comments the Committee noted the Government's statement that it was committed to implementing the National Action Plan for Orphans and other Vulnerable Children (NAP for OVC) and was actively funding its programmes targeting all vulnerable children. It also noted the impact of the Harmonized Social Cash Transfers schemes (HSCT) and the BEAM project, which contained components aimed at protecting and supporting orphans and vulnerable children as well as the National Case Management System Project which addresses the needs of OVC. The Committee noted, however, that according to the 2015 UNAIDS estimates, an average of 790,000 children aged 0 to 17 years were orphans due to HIV/AIDS. The Committee therefore urged the Government to strengthen its efforts in order to prevent the engagement of these children in the worst forms of child labour.

The Committee notes the Government's information that the coordinated efforts between the BEAM Community Selection Committee and the National Case Management System for the Care and Protection of Children which is responsible for the identification and referral of eligible children has remarkably increased the Government's reach to vulnerable children. In addition, initiatives to harmonize the social protection programmes have been taken so that children benefitting from BEAM can also benefit from other programmes such as the HSCT programme.

The Committee further notes the Government's information that the NAP for OVC which has embarked on its phase III from 2016 to 2020, has a multi-sectoral approach to comprehensively assist and support children and families in the country and there are defined coordination mechanisms and referral pathways for efficiency and programme effectiveness. The Government also indicates that within the framework of this action plan, a total of 91,391 children (42,315 males and 49,076 females), including 508 children involved in child labour and its worst forms, were assisted during the year 2018. The Committee further notes that according to the 2019 UNAIDS estimates, the average number of children aged 0 to 17 that are orphaned due to HIV/AIDS is 500,000, indicating a reduction from the 2015 estimates. ***While noting the measures taken by the Government, the Committee urges it to continue its efforts to prevent the engagement of orphans and OVCs in the worst forms of child labour, including through the NAP for***

***OVC, the HSCT, the BEAM project and the National Case Management System. It requests the Government to provide information on the measures taken and the results achieved in this regard.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 5** *(Saint Lucia);* **Convention No. 77** *(Haiti);* **Convention No. 78** *(Haiti);* **Convention No. 123** *(Uganda);* **Convention No. 124** *(Kyrgyzstan, Uganda);* **Convention No. 138** *(Belize, Brunei Darussalam, Chad, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Grenada, Guinea-Bissau, Haiti, India, Kenya, Kiribati, Kyrgyzstan, Lebanon, Lesotho, Maldives, Mauritania, Netherlands: Aruba, Pakistan, Panama, Papua New Guinea, Peru, Republic of Moldova, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Sierra Leone, South Sudan, Sudan, Tajikistan, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Republic of Tanzania, Bolivarian Republic of Venezuela, Viet Nam);* **Convention No. 182** *(Belize, Brunei Darussalam, Chad, Congo, Djibouti, Dominica, Equatorial Guinea, Ghana, Grenada, Guinea-Bissau, Guyana, Haiti, India, Kenya, Kiribati, Kyrgyzstan, Lebanon, Lesotho, Madagascar, Maldives, Netherlands: Aruba and Curaçao, Oman, Pakistan, Panama, Peru, Philippines, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Spain, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Trinidad and Tobago, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Republic of Tanzania, United States of America, Vanuatu, Bolivarian Republic of Venezuela, Viet Nam, Zimbabwe).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 59** *(Peru)*; **Convention No. 77** *(Nicaragua, Panama, Peru, Philippines, Poland, Slovakia)*; **Convention No. 78** *(Nicaragua, Panama, Peru, Poland, Slovakia)*; **Convention No. 79** *(Peru, Poland, Spain)*; **Convention No. 90** *(Pakistan, Peru, Philippines, Poland, Saudi Arabia, Slovakia, Slovenia, Spain)*; **Convention No. 123** *(Malaysia, Saudi Arabia, Slovakia, Spain)*; **Convention No. 124** *(Panama, Poland, Slovakia, Spain)*; **Convention No. 138** *(Malta, Oman, Poland, Serbia, Seychelles, Slovakia, Slovenia, Spain, United Kingdom of Great Britain and Northern Ireland, Uruguay)*; **Convention No. 182** *(Malta, Mauritania, Poland, Seychelles, Slovakia, Slovenia, Suriname, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Falkland Islands: Malvinas, Guernsey and St Helena, Uruguay)*.

# Equality of opportunity and treatment

## Afghanistan

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments next session.

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee previously noted that while some of the provisions of the Labour Law (namely sections 8, 9(1), 59(4) and 93) read together provided some protection against discrimination based on sex with respect to remuneration, they did not reflect fully the principle of the Convention. The Committee takes note of the Government's indication, in its report, that the Tripartite Consultative Committee is still engaged in the revision process of the Labour Law with a view to ensuring greater conformity with the provisions of the Convention. The Committee wishes to point out that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 673). ***The Committee requests the Government to continue to provide information on the activities and recommendations of the Tripartite Consultative Committee concerning the revision of the Labour Law, and trusts that in the near future its national legislation will explicitly give full legislative expression and effect to the principle of equal remuneration for men and women for work of equal value set out in the Convention.***

*Gender pay gap.* The Committee welcomes the statistics provided by the Government and notes that, according to the Afghanistan Living Conditions Survey (ALCS) for 2013–14, women's average monthly wages were lower than those of men in all job categories, except in the public sector. Men were earning on average 30 per cent more than women in the same occupation and up to three and a half times more than women in the agriculture and forestry sector, where women represented two-thirds of the workforce. The Committee notes that, according to the ALCS for 2016–17, the situation of women has deteriorated as the labour force participation rate of women decreased from 29 per cent in 2014 to 26.8 per cent in 2017, and remained far lower than the labour force participation of men (80.6 per cent in 2017). Moreover, more women than men were in a vulnerable employment situation (89.9 per cent of women compared to 77.5 per cent of men). The Committee ***regrets*** that the ALCS for 2016–17 does not contain any more information on the gender pay gap. ***The Committee requests the Government to provide information on the measures taken to reduce the gender pay gap and identify and address its underlying causes, as well as on the results achieved in this regard. Recalling the importance of the regular collection of statistics in order to undertake an assessment of the nature, extent and evolution of the gender pay gap, the Committee requests the Government to provide updated information on the earnings of men and women disaggregated by economic activity and occupation, both in the private and public sectors, as well as any available statistics or analysis on the gender pay gap.***

*Article 3. Objective appraisal of jobs. Civil service.* Referring to its previous comments, the Committee takes note of the salary scale annexed to the Civil Servants Law, 2008, according to which salaries are determined by reference to grades and steps. It notes that section 8 of the Law refers to the criteria used to determine employment grades according to diploma, skills and work experience. The Committee notes from the data of the national Central Statistics Organization that in 2016 women represented 22.5 per cent of all public sector employees, but only 7.5 per cent of those were placed in the third grade or higher position. ***The Committee requests the Government to provide information on the practical application of section 8 of the Civil Servants Law, 2008, including on the methods and factors used to classify jobs under the different grades in order to ensure that tasks mainly performed by women are not being undervalued in comparison to the tasks traditionally performed by men. The Committee further requests the Government to provide information on the distribution of men and women in the various categories and positions of the civil service with their corresponding levels of earnings.***

*Article 4. Awareness-raising activities. Cooperation with employers' and workers' organizations.* The Committee notes the Government's indication that public information campaigns and activities to raise awareness about the principle of the Convention, particularly among employers' and workers' organizations, have been continued, some of which with the assistance of the ILO. ***The Committee requests the Government to continue to provide information on awareness-raising activities carried out to promote the principle of the Convention, and to indicate whether any cooperation or joint activities have been undertaken together with the employers' and workers' organizations. The Committee also requests the Government to specify whether, as a result of the awareness-raising activities already implemented, the principle of the Convention has been effectively addressed by the social partners in collective agreements and, if so, to provide information in this respect, including copies of the relevant provisions.***

*Enforcement.* The Committee notes that, in the National Labour Policy for 2017–20, the Government recognizes laxity in the enforcement of labour-related legislation and indicates that periodic inspections will be conducted to reveal quality of compliance, as well as gaps in compliance for which appropriate actions would be taken against defaulting employers. The Committee further notes that, in its last concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the fact that decisions of informal justice mechanisms are discriminatory against women and undermine the implementation of existing legislation, and recommended that women's accessibility to the formal justice system be enhanced (CEDAW/C/AFG/CO/1-2, 30 July 2013, paragraphs 14 and 15). ***The Committee requests the Government to provide information as to the steps taken to ensure stricter enforcement of labour legislation as regards the application of the Convention. In particular, the Committee requests information regarding compliance with the requirements of the Convention, including the level of compliance and the identification of gaps in compliance, as well as any actions taken against defaulting employers. The Committee further requests the Government to provide information on any measures taken or envisaged to enhance women's accessibility to the formal justice system, as well as on any complaints made with regard to the principle of the***

***Convention dealt with by the courts or any other competent authorities, including information on sanctions and remedies provided.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Legislation.* The Committee previously noted that the prohibition of discrimination in section 9 of the Labour Law is very general and urged the Government to take the opportunity of the Labour Law reform process, in the context of the Decent Work Country Programme and the National Action Plan for Women of Afghanistan (NAPWA) 2007–17, to amend its legislation to explicitly prohibit direct and indirect discrimination covering all the grounds listed in *Article 1(1)(a)* of the Convention, as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with *Article 1(1)(b)* of the Convention. The Committee notes the Government's indication, in its reports, that the Tripartite Consultative Committee is still engaged in the revision process of the Labour Law. Referring to its previous comments on section 10(2) of the Civil Servants Law, 2008, which only prohibits discrimination in recruitment based on the grounds of sex, ethnicity, religion, disability and "physical deformity", the Committee notes the Government's general statement that provisions of the Labour Law are also applicable to civil servants. ***The Committee requests the Government to continue to provide information on the activities and recommendations of the Tripartite Consultative Committee concerning the revision of the Labour Law, and trusts that in a near future its national legislation will explicitly prohibit, both in the private and public sectors, direct and indirect discrimination covering all the grounds listed in Article 1(1)(a) of the Convention, as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with Article 1(1)(b) of the Convention, covering all aspects of employment and occupation. In the meantime, the Committee requests the Government to clarify the relationship between section 9 of the Labour Law and section 10(2) of the Civil Servants Law and, more generally, to indicate whether all the provisions of the Labour Law shall apply to civil servants or whether this is limited to provisions of the Labour Law which are expressly referred to by the Civil Servants Law.***

*Article 1(1)(a). Discrimination on the ground of sex. Work-related violence and sexual harassment.* The Committee takes note of the Law on the Prohibition of Harassment against Women and Children, adopted in December 2016 and approved by the President on April 2018, which defines and criminalizes physical, verbal and non-verbal harassment, and provides that harassment is punishable with a fine. On the other hand, it notes that section 30 of the Law on the Elimination of Violence against Women (EVAW), 2009, which provides that harassment is punishable by up to six months of imprisonment, was firstly incorporated into the revised Penal Code in March 2017 and then removed on the instruction of the Government in August 2017, as a result of pressure exerted by some members of the Parliament, which left the status of the EVAW Law in a state of uncertainty. The Committee also notes that several United Nations (UN) bodies expressed concern at the escalating level of targeted attacks, including killings, against high profile women, particularly those in the public sector, as well as at the prevalence of sexual harassment against women in the workplace (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 55 and Report of the UN Special Rapporteur on violence against women, its causes and consequences, A/HRC/29/27/Add.3, 12 May 2015, paragraphs 21 and 26). It notes that, according to a survey carried out in 2015 by the Women and Children's Legal Research Foundation, based in Afghanistan, 87 per cent of the women interviewed experienced harassment in the workplace. It further notes that the Afghanistan Independent Human Rights Commission (AIHRC) recently indicated that women police officers are particularly affected and that the Ministry of the Interior is currently finalizing an internal complaints mechanism to this end (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 53). The Committee notes that, pursuant to the 2015 Regulations on the Elimination of Harassment Against Women (11/07/1394), commissions aimed at addressing complaints have been established in several provinces, but that the UN High Commissioner for Human Rights recently highlighted that the mechanisms to combat sexual harassment against women in the workplace remained largely ineffective owing to underreporting, which is mainly due to the social stigma attached to the issue (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 54). ***The Committee requests the Government to provide information on any concrete measures (such as, for example, campaigns addressed to the general public to promote gender equality) and specific programmes taken or envisaged to combat violence against women (and more particularly high-profile women), and sexual harassment at the workplace, both in the private and public sectors, including any social stigma attached to this issue. It further requests the Government to provide information on the number, nature and outcome of any complaints or cases of work-related violence or sexual harassment in the workplace handled by the commissions established under the 2015 Regulations, the labour inspectorate and the courts. The Committee also requests the Government to clarify the relationship between the Law on the Elimination of Violence against Women, 2009, and the Law on the Prohibition of Harassment against Women and Children, 2016, as well as the current status of both legislations. Please provide a copy of the Law on the Prohibition of Harassment against Women and Children, 2016, and of the 2015 Regulations on the Elimination of Harassment Against Women (11/07/1394).***

*Article 2. Equal access of men and women to vocational training and education.* The Committee notes the Government's indication that girls represent 45 per cent of total school enrolment. Referring to the discussion held at the Conference Committee on the Application of Standards at its 106th Session (June 2017) on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee notes that non-state groups deliberately restricted the access of girls to education, including attacks and closure of girls' schools, and that 35 schools were used for military purposes in 2015. It further notes the low enrolment rate of girls, in particular at the secondary school level, high dropout rates especially in rural areas owing to a lack of security in the journey to and from school, and the written threats warning girls to stop going to school by non-state armed groups. The Committee notes that, in the Afghanistan Living Conditions Survey (ALCS) for 2016–17, the

Central Statistics Organization indicates that, in 2016, girls' access to primary education was in decline, and female gross attendance rates in primary, secondary and tertiary education represented only 0.71, 0.51 and 0.39 per cent of the corresponding male rates, respectively. Furthermore, it is estimated that only 37 per cent of adolescent girls are literate, compared to 66 per cent of adolescent boys and that 19 per cent of adult women are literate compared to 49 per cent of adult men. ***While acknowledging the difficult situation prevailing in the country, the Committee requests the Government to step up its efforts to encourage girls' and women's access and completion of education at all levels, and to enhance their participation in a wide range of training programmes, including those in which men have traditionally predominated. It requests the Government to provide updated statistics disaggregated by sex, on participation and completion rates of the different levels of education, as well as in the various vocational training programmes. The Committee again requests the Government to provide information on any measures taken as a result of the affirmative action policy in education envisaged by the NAPWA 2007–17.***

*Article 5(1). Special measures of protection. Work prohibited for women.* The Committee previously noted that the list of physically arduous or harmful work prohibited for women to be established under section 120 of the Labour Law was still under preparation. ***Noting the absence of updated information provided by the Government in that respect, the Committee again urges the Government to ensure that, in the process of the Labour Law reform, any restrictions on the work that can be done by women are strictly limited to maternity protection and are not based on stereotyped assumptions regarding their capacity and role in society that would be contrary to the Convention. It requests the Government to provide a copy of the list of work that is prohibited for women, once adopted.***

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

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

## Barbados

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1974)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* In previous comments, the Committee noted the absence of a legislative framework supporting the right to equal remuneration for men and women for work of equal value. Having noted also that the existing mechanisms for collective bargaining and wage councils for wage determination did not seem to promote and ensure effectively this right, the Committee requested the Government to take measures to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee notes from the Government's report on Discrimination (Employment and Occupation) Convention, 1958 (No. 111) that the draft National Gender Policy, which includes a section on employment, is currently being reviewed by the relevant ministries but that the Employment (Prevention of Discrimination) Bill is yet to be adopted. The Committee once again recalls the particular importance of capturing in legislation the concept of "work of equal value" in order to address the segregation of men and women in certain sectors and occupations due to gender stereotypes. ***In light of the ongoing legislative and policy developments on gender equality and non-discrimination, the Committee asks the Government to take the necessary measures to ensure that the principle of equal remuneration for men and women for work of equal value will be fully reflected in the National Gender Policy and in the Employment (Prevention of Discrimination) Bill, and to provide a copy of the policy and the new legislation, once adopted.***

*Gender earnings gap and occupational segregation.* The Committee notes from the statistics published by the Barbados Statistical Service (Labour Force Survey) that of all women employed in 2015, 52.4 per cent earned less than 500 Barbadian dollars (BBD) per week compared to 41.8 per cent of all men employed in that same year. Among those earning between BBD500 and BBD999 per week, men represented almost 56 per cent and women only 44 per cent. Among those earning between BBD1,000 and BBD1,300, women represented 46.6 per cent and men 53.1 per cent. Men also account for a little more than half of the workers (52.5 per cent) in the highest earnings group (over BBD1,300). The Committee further notes from the Labour Force Survey data for 2015 the persistent occupational gender segregation of the economy with women mostly employed as service workers and clerks while men are mostly employed as craft and related workers or plant and machine operators. When looking at economic sectors, women workers are highly represented in "Accommodation and Food Services", and their numbers sometimes more than doubles or triples the number of male workers in "Finance and Insurance", "Education" and "Human Health and Social Work". Women are also over-represented among household employees. In contrast, men largely predominate in the "Construction" and "Transportation and Storage" sectors. The Committee further refers to its comments on Convention No. 111. ***The Committee asks the Government to take measures to reduce the earnings gap between men and women and to increase the employment of women in jobs with career opportunities and higher pay. Recalling that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations, the Committee also asks the Government to provide information on the results achieved under the National Employment Policy and the National Gender Policy, once adopted, to address occupational gender segregation and to increase the employment of women and men in sectors and occupations in which they are under-represented.***

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

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

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1974)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments

*Articles 1–3 of the Convention. Legislative protection against discrimination.* The Committee had previously noted that the Employment Rights Act 2012, while protecting workers against unfair dismissal on all the grounds enumerated in *Article 1(1)(a)* and certain additional grounds under *Article 1(1)(b)* of the Convention, did not ensure full legislative protection against both direct and indirect discrimination for all workers in all aspects of employment and occupation. The Committee previously asked the Government to address the protection gaps in the legislation. The Committee notes that the Government in its report merely restates the constitutional provisions on equality, and the protections afforded by the Employment Rights Act 2012. The Government also maintains that no distinctions, exclusions, or preferences based on the prohibited grounds set out in *Article 1(1)(a)* or on any additional grounds determined in accordance with *Article 1(1)(b)* exist in the country, and that no discrimination cases have been reported. Regarding the presumed absence of discrimination, the Committee considers that it is essential to acknowledge that no society is free from discrimination, and that continuous action is required to address discrimination in employment and occupation, which is both universal and constantly evolving (see 2012 General Survey on the fundamental Conventions, paragraphs 731 and 845). ***Noting that the Employment (Prevention of Discrimination) Bill 2016 is still in draft form, the Committee urges the Government to take steps, without further delay, to address the protection gaps in the legislation, and to ensure that the anti-discrimination legislation expressly defines and prohibits direct and indirect discrimination in all aspects of employment and occupation, for all workers, and on all the grounds set out in the Convention. The Committee also repeats its request to the Government to provide information on the steps taken to ensure that all workers are being protected in practice against discrimination not only with respect to dismissal but with respect to all aspects of employment and occupation, on the grounds set out in the Convention. Such measures could include public awareness raising aimed at, or in cooperation with, workers and employers and their organizations, or the development of codes of practice or equal employment opportunities guidelines to generate broader understanding on the principles enshrined in the Convention. Noting with regret that for several years the Government has not provided any information on the action taken to promote and ensure equality of opportunity and treatment with respect to race, colour and national extraction, and to eliminate discrimination in employment and occupation on these grounds, the Committee urges the Government to provide such information without delay, including any studies or surveys on the labour market situation of the different groups protected under the Convention.***

*Article 1(1)(a). Discrimination on the grounds of sex. Sexual harassment.* The Committee previously noted the absence in the Employment Rights Act 2012 of provisions protecting workers against sexual harassment. The Committee notes the Government's indication that the proposed Sexual Harassment in the Workplace Bill will define and prohibit both quid pro quo and hostile environment sexual harassment and provide for a tribunal to hear complaints and determine matters related to sexual harassment. ***The Committee urges the Government to take steps to ensure that the draft Sexual Harassment in the Workplace Bill is adopted speedily and that it will define and prohibit sexual harassment (both quid pro quo and hostile environment harassment) in all aspects of employment and occupation, and asks that the Government provide a copy of the latest version of the Bill, or as enacted, with its next report.***

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

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

## Burundi

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

*Article 1(1)(a) of the Convention. Discrimination on the basis of sex or gender. Gender-based violence.* In its previous comment, the Committee asked the Government to provide information on the following points: (1) the implementation and application in practice of Act No. 1/13 of 22 September 2016 concerning the prevention and suppression of gender-based violence and victim protection (hereinafter "the Act of 2016"), which defines and punishes, inter alia, gender-based violence (GBV), including sexual violence, sexual harassment, traditional gender-hostile practices and economic violence, which is defined as denying a spouse access to family resources or forbidding a spouse to work, indicating the number and type of cases of gender-based violence dealt with by the labour inspectorate and the courts, as well as the penalties imposed; (2) the steps taken or contemplated to inform and raise the awareness of employers, workers and their respective organizations, labour inspectors, judges and also the general public with regard to action against gender-based violence, including the steps taken to publicize the content of the Act of 2016; and (3) the activities of the Independent National Human Rights Commission (CNIDH) against gender-based violence in employment. The Committee notes from the Government's report that: (1) the labour inspectorate has not identified any cases of gender-based violence in employment and occupation, but the courts dealt with 4,004 cases of gender-based violence between 2016 and September 2018, with penal servitude being imposed as a penalty; (2) the measures taken by the Government to raise awareness of the Act of 2016 include training of trainers at the Training Centre for Legal Personnel; the launching, by the Second Vice-President of the Republic, of an outreach campaign; the translation of the Act into the national language (Kirundi); raising the awareness of the different State services; broadcasting;

community awareness-raising through community leaders and the Women's National Forum; and (3) the CNIDH undertook a number of activities aimed at combating gender-based violence in employment. The Government adds that the CNIDH took part in activities led by various partners in the GBV field to hold exchanges with them, review their achievements and provide legal support. Finally, the Committee notes the Government's intention to compile an inventory of laws that discriminate against women with a view to amending them in accordance with the Constitution and ratified international instruments, following the recommendations of the CNIDH. ***The Committee requests the Government to provide information on the progress achieved and to provide copies of the amended texts while conducting the inventory.***

*Sexual harassment.* In its previous comment, the Committee requested the Government to: (1) examine the possibility of expanding the definition of sexual harassment by adding the notion of a hostile, offensive or humiliating work environment, and to specify the procedure to be followed and the penalties that apply in cases of sexual harassment, in the absence of any specific provision in that regard in the Act of 2016; and (2) provide information on the practical steps taken to prevent and eliminate sexual harassment in the public and private sectors, including measures designed to raise the awareness of employers, workers and their respective organizations with regard to the prevention and treatment of sexual harassment. The Committee notes the Government's indication that the Gender Commission of the National Assembly, meeting to review progress in raising awareness of the Act of 2016 and to make recommendations, has suggested amending the Act in view of its lack of compliance with the new Penal Code and with the Gender Commission's definition of sexual harassment. Regarding the procedure to be followed and penalties applied in cases of sexual harassment, the Government indicates that those are provided under section 586 of the Penal Code. Finally, in its Beijing+25 report, the Government adds that sexual harassment is included in the list of offences established in the Act of 2016, under section 61 of which all GBV offences cannot be amnestied and are imprescriptible with regard to both public action and the penalty imposed, which is irreducible and cannot be pardoned. ***The Committee hopes that the Government will take the opportunity provided by the revision of the Act of 2016 to complete the definition of sexual harassment by including the notion of a hostile, offensive or humiliating work environment and will provide information on the progress made in this regard. The Committee once again requests the Government to provide information on the practical steps taken to prevent and eliminate sexual harassment in the public and private sectors, including measures designed to raise the awareness of employers, workers and their respective organizations.***

*Article 2. Equality of opportunity and treatment for men and women.* In its previous comment, the Committee asked the Government to provide information on: (1) the increase in the rate of school enrolment and vocational training of girls, (2) women's access to productive resources and to employment, including to managerial posts in the public and private sectors; and (3) the adoption of a new national gender policy, replacing the one adopted in 2012, and to provide details on those sections relating to gender equality in employment and occupation.

With regard to the increase in the rate of school enrolment and vocational training of girls and women's access to productive resources and employment, the Committee notes from the Government's report, as well as from its Beijing+25 report, that the steps taken to increase the access of girls to primary and secondary school include: integrating the gender equity dimension in education into the National Development Plan 2018–27; the formulation of the Sectoral Plan for the Development of Education and Training (PSDEF) 2012–20; and the Transitional Plan for Education 2018–20 (PTE 2018–20), which was primarily aimed at basic education. The Committee also notes: the creation of a unit for inclusive education to take all vulnerable groups into account, such as persons with disabilities; the return to school of adolescent mothers; the 2018 launching of the "aunt/school and father/school" project to combat school drop-outs and unwanted pregnancies; the renewal of curricula and the eradication of gender stereotypes from text books and other scholastic tools; and the annual holding of the "Back to School" campaign. The school enrolment rate for girls stood at 87 per cent in 2018. Moreover, to encourage women and girls to take up sciences, engineering, technology and other disciplines, certificates were awarded to certain women and girls who excelled in the field of science during the celebration in February 2019 of International Day of Women and Girls in Science. With regard to women's access to productive resources and employment, the Committee notes an empowerment project for women which sets up guarantee funds to help women obtain microcredits. The project is already operating in eight provinces (Cibitoke, Bubanza, Bururi, Makamba, Rutana, Karusi, Bujumbura Marie and Bujumbura).

The Committee also notes the adoption of the National Development Plan (PND) 2018–27, the new frame of reference for planning, which also takes account of different social policies, such as the National Gender Policy (PNG) and the 2017–2021 action plans for the PNG and for United Nations Security Council resolution No. 1325, which seek to encourage sectoral ministries to create gender units and to involve them in their sectoral planning and budgets to ensure effective ministerial programming and budgetary allocation for gender equity and equality. However, the Government indicates that it faces numerous challenges, including insufficient funds to implement the plans of action and the absence of coordination

institutions. ***The Committee requests the Government to indicate the measures taken or envisaged to implement the action plans and the National Gender Policy.***

*Indigenous peoples.* In its previous comment, the Committee urged the Government to take the necessary steps to: (1) ensure equal access for the Batwa people to education, vocational training and employment, including to enable them to exercise their traditional activities; (2) combat stereotypes and prejudice against this indigenous community; and (3) to promote tolerance among all sections of the population. The Committee also asked the Government to provide information on: (1) the impact of Act No. 1/07 of 15 July 2016 revising the Forestry Code, which provides that the rational and balanced management of forests is based, inter alia, on the principle of participation by the grassroots communities; and (2) the exercise of traditional activities by the Batwa on the land where they live. The Committee notes the Government's indication that: (1) the cost of the schooling of Batwa pupils has been financed and that awareness-raising activities to encourage young Batwa to take up schooling have been carried out by various associations including Unite to Promote the Batwa (UNIPROBA); and (2) a secondary-level boarding school has been reserved exclusively for young Batwa (Gitega Province) and young Batwa have been helped to enter secondary education and university. The Government indicates that the measures taken to encourage adolescent mothers to return to school after pregnancy have not been welcomed by them. The Committee notes the information that young Batwa have received vocational training in car mechanics, carpentry, sewing, information technology, construction, etc. According to the Government, Act No. 1/07 of 15 July 2016 revising the Forestry Code has had a negative impact on the economic life of the Batwa people. They have lost an economic resource that enabled them to sell basketwork and traditional medicines based on wood and medicinal plants from the forest. Act No. 1/21 of 15 October 2013 issuing the Mining Code has also deprived the Batwa of access to clay to produce pottery to use or sell. To counter this problem, the Government has undertaken to mount forestry management projects in association with the Batwa people for the use of the forest under their control and subject to their permission. The Committee also notes that in its Beijing+25 report, the Government recognizes the Batwa community as the most marginalized group. It is for this reason that many legal, statutory and institutional mechanisms have been put in place so that the Batwa can participate fully in political, economic, social and cultural life and draw attention to their concerns. The Government refers, among the positive steps taken, to the distribution of land to the Batwa so that they can settle, and the training provided to Batwa community women from the Vyegwa locality, who are now able to build their own houses, or be employed on other construction sites. These training activities for Batwa women have also contributed to gender, social and sustainable development, by changing mentalities and improving social relations between the Batwa and other population groups, and by encouraging reflection on prejudice against the Batwa people. ***Taking into account the Government's assessment of the impact of the Forestry and Mining Codes on the ability of the Batwa to continue to practice their traditional occupations, the Committee requests the Government to: (i) intensify its efforts to ensure that indigenous peoples have the right to practice their traditional activities and retain their means of subsistence without discrimination; and (ii) provide detailed information on the forestry management projects developed in association with the indigenous peoples concerned and on the lands attributed to the Batwa.***

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

## Chad

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

*Article 1(1)(a) of the Convention. Grounds of discrimination.* The Committee notes with ***concern*** that the Labour Code has been awaiting adoption for many years. ***The Committee can only hope that the Government will soon be in a position to report on the adoption of the new Labour Code and requests it to ensure that it contains provisions explicitly prohibiting any direct or indirect discrimination based, as a minimum, on all the grounds enumerated in Article 1(1)(a) of the Convention, including race, colour, national extraction and social origin, at all stages of employment and occupation. The Committee requests the Government to provide a copy of the Labour Code as soon as it has been adopted, and of any implementing texts with respect to non-discrimination and equality in employment and occupation.***

*Discrimination based on sex and equality of treatment between men and women.* The Committee recalls that, in a previous comment, the Government acknowledged that section 9 of Ordinance No. 006/PR/84 of 1984, which gives the husband the right to object to his spouse's activities, is completely outdated and that it would take measures to repeal this provision, which no longer corresponds to the current situation. The Government also specified that occupational segregation between men and women is due, inter alia, to the high levels of illiteracy and social factors. The Committee previously requested the Government to take the necessary measures in this regard. However, it notes that the Government has confined itself to referring once again to articles 13, 14, 33, 38, 39 and 42 of the Constitution and section 369 of the Penal Code. ***The Committee therefore urges the Government to take the necessary measures to formally repeal section 9 of the Ordinance of 1984 and to combat actively stereotypes and prejudices concerning the vocational capacities and aspirations of men and women. The Committee also requests the Government to take measures to raise awareness among parents and the population as a whole about the importance of girls and boys attending and remaining in school, and to promote the access of girls and women to a broader range of training courses and occupations, particularly those that are traditionally occupied by men. The Committee requests the Government to provide information on any measures taken in this regard.***

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

## Congo

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2(a) of the Convention. Principle of equal remuneration for men and women workers for work of equal value. Laws and regulations.* The Committee recalls that, since 2005, it has been drawing the Government's attention to the need to amend sections 80(1) and 56(7) of the Labour Code, which limit the application of the principle of equal remuneration to the existence of "equal working conditions, qualifications and output" (section 80(1)) or to "equal work" (section 56(7)), and do not reflect the notion of "work of equal value". The Committee notes that the Government reaffirms that amendments to sections 80(1) and 56(7) of the Labour Code are envisaged to ensure that the concept of "work of equal value" is binding. ***Noting the Government's commitment, the Committee requests it to ensure, within the framework of the ongoing revision of the Labour Code, that the principle of equal remuneration for men and women workers for work of equal value set out in the Convention is set out in the Labour Code.***

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

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

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1–3 of the Convention. Protection against discrimination. Legislation.* For many years the Committee has been emphasizing the shortcomings in the Labour Code and the General Civil Service Regulations regarding the protection of workers against discrimination, since these texts do not cover all of the grounds of discrimination or all the aspects of employment and occupation set out in the Convention. The Committee recalls that the Labour Code only covers the grounds of "origin", gender, age and status in relation to wage discrimination (section 80) and the grounds of opinion, trade union activity, membership or not of a political, religious or philosophical group or a specific trade union in relation to dismissal (section 42). The General Civil Service Regulations prohibit any distinction between men and women in relation to their general application and any discrimination on the basis of family situation in relation to access to employment (sections 200 and 201). The Committee notes the Government's indication that a preliminary draft of a new Bill amending and supplementing certain provisions of the Labour Code will take into account the grounds of discrimination set out in *Article 1(1)(a)*. ***The Committee asks the Government to ensure that, within the framework of the***

***ongoing revision of the Labour Code, discrimination on all of the grounds set out in the Convention is explicitly prohibited, as well as discrimination on any other grounds which it considers appropriate to include in the Code, at all stages of employment and occupation, including recruitment. The Committee also asks the Government to take the necessary measures to amend the provisions of the General Civil Service Regulations in order to ensure that civil servants are protected as a minimum in relation to the grounds set out in Article 1(1)(a) in respect of all aspects of employment, including recruitment and promotion. The Committee also requests the Government to provide information on any legislative developments in this respect.***

*Article 1(1)(a). Discrimination based on sex. Sexual harassment.* The Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed deep concern at the high prevalence of violence against women and girls, especially sexual harassment at school and at work, the delay in adopting a comprehensive law to combat all forms of violence against women and the lack of awareness regarding this issue and of reporting of gender-based violence (CEDAW/C/COG/CO/6, 23 March 2012, paragraph 23). The Committee notes the Government's indication that, since 2011, the new draft Bill amending and supplementing certain provisions of the Labour Code has contained provisions against sexual harassment. ***The Committee once again asks the Government to ensure that provisions covering both quid pro quo harassment and sexual harassment which creates a hostile, intimidating or offensive environment are adopted and that they protect the victims of sexual harassment and establish penalties for the perpetrators. The Committee also asks the Government to take steps, in collaboration with employers' and workers' organizations, to prevent and combat sexual harassment, such as awareness-raising measures for employers, workers and educators as well as for labour inspectors, lawyers and judges, and to establish information systems and complaints procedures which take into account the sensitive nature of this issue in order to bring an end to these practices and allow victims to exercise their rights without losing their jobs.***

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

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

## Democratic Republic of the Congo

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Definition of remuneration. Legislation.* In its previous comment, the Committee noted with regret that section 86 of the Labour Code restricted application of the principle of equal remuneration to "conditions of work, qualifications and output". The Committee also noted that section 7.8 of the Labour Code, which defines the concept of "remuneration", excludes benefits to which the principle enshrined in the Convention applies. The Committee notes the Government's indication that no steps have been taken to bring the legislation into conformity with the Convention, but that this question is to be addressed shortly. ***The Committee urgently requests the Government to take the necessary steps to revise the provisions of the Labour Code in order to ensure that the principle of equal remuneration for men and women for work of equal value is explicitly included in the Code and that it applies to all components of remuneration as defined in Article 1(a) of the Convention.***

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

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

*Articles 1 and 2 of the Convention. Protection of workers against discrimination on all grounds covered by the Convention in all aspects of employment and occupation. Legislation. Public and private sectors.* In its previous comments, the Committee had noted that the provisions relating to discrimination included in Act No. 16/013 of 15 July 2016 issuing the staff regulations for state civil servants (hereinafter, Act No. 16/013), and the Labour Code (sections 62, 128 and 234), neither defined nor prohibited all the forms of discrimination in employment and occupation on the basis of all the grounds set out in the Convention. The Committee notes the Government's indication in its report that the question of defining discrimination in the legislation will be placed before the National Labour Council for discussion. ***The Committee again requests the Government to take the necessary measures to ensure that a definition of direct and indirect discrimination, based as a minimum on all the grounds set out in the Convention and covering all aspects of employment and occupation, is included in the legislation applicable to the public and private sectors.***

*Article 1(1)(a) and 3(d). Discrimination based on sex. Leave in the civil service.* The Committee notes with ***regret*** that, since 2007, it has been requesting the Government to take the necessary measures to modify section 30 of Act No. 16/013, under which women public officials who have taken maternity leave cannot claim their right to full paid annual leave during the same year. The Committee notes the Government's indication that the issue will be discussed with the trade unions in a joint committee. ***The Committee requests the Government to indicate whether: (i) the question of the incompatibility of section 30 of Act No. 16/013 with the Convention has been discussed by the joint committee; and (ii) measures were adopted to modify the section.***

*Discrimination based on race or ethnic origin. Indigenous peoples.* Having highlighted on numerous occasions the marginalization of indigenous "pygmy" peoples, the Committee requested the Government

to take measures without delay to bring an end to the discrimination that they face in employment and occupation. The Committee notes that the Government has not provided information on possible measures adopted in this regard. The Government indicates, as it has in previous reports, that a Bill to promote and protect the rights of indigenous pygmy peoples is passing through Parliament. The Committee notes in that respect that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recently observed that the Bill for the protection of indigenous peoples had been pending before Parliament since 2014 and that women members of the pygmy peoples continued to face multiple forms of discrimination (CEDAW/C/COD/CO/8, 6 August 2019, paragraph 44). ***The Committee once again requests the Government to take measures as quickly as possible to bring an end to discrimination against men and women workers belonging to the indigenous pygmy peoples. In more precise terms, the Committee requests the Government to take measures, such as training for labour inspectors and employers, the provision of education materials for the public and other awareness-raising measures to: (i) combat prejudices and stereotypes of which indigenous peoples are victims; (ii) combat discrimination relating to their working conditions (including remuneration); and (iii) allow indigenous peoples access to all levels of education and vocational training, employment and other resources which enable them to carry out their traditional and subsistence activities, including land. The Committee also requests the Government to provide information on any developments in respect of the Bill for the protection of indigenous peoples.***

*General observation of 2018.* More generally, with regard to the points raised above, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests it to provide information in response to the questions raised in that observation.***

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

## Equatorial Guinea

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes that the Government did not take the opportunity provided by the enactment of the Fundamental Act of Equatorial Guinea, on 16 February 2012, and of the General Labour Reforms Act (No. 10/2012), on 24 December 2012, to address the matters raised by the Committee.

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination.* The Committee notes that section 15 of the Fundamental Act of 2012 (previously section 15 of the Fundamental Act of 1995) provides that any bias or discrimination on tribal, ethnic, gender-related, religious, social, political or any other similar grounds, when duly ascertained, is punishable by law. Further, under section 1(3)(d) of the General Labour (Reforms) Act of 2012 (previously section 1(4) of the General Labour Act, 1990) the State guarantees equality of opportunity and treatment in employment and occupation and provides that no one may be subjected to discrimination, that is, to any distinction, exclusion or preference on grounds of race, colour, sex, political opinion, national extraction, social origin or trade union affiliation. The Committee notes that while section 1(3)(d) of the General Labour (Reforms) Act of 2012, continues to omit reference to religion as one of the prohibited grounds of discrimination, that ground is included in section 15 of the Fundamental Act of 2012. The Committee recalls that where provisions are adopted in order to give effect to the principles in the Convention, they should include at least all of the grounds of discrimination laid down in *Article 1(1)(a)* (see 2012 General Survey on the fundamental Conventions, paragraph 853). ***The Committee therefore urges the Government to take steps to add the ground of "religion" to the list of prohibited grounds of discrimination at the earliest opportunity. The Committee once again asks the Government to provide information on the practical application of section 15 of the***

***Fundamental Act of 2012, and of section 1(3)(d) of the General Labour (Reforms) Act of 2012, and to indicate whether any administrative or judicial decisions have been handed down concerning these provisions, and if so, to provide details thereof.***

*Articles 1(1)(b) and 5. Other grounds. Special measures.* The Committee notes that section 1(4) of the General Labour Act of 1990 (now section 1(3)(d) of the General Labour (Reforms) Act of 2012) makes provision for facilitating the recruitment of older workers and those with reduced working capacity. The Committee had previously requested a copy of the National Employment Policy (Reforms) Act No. 6/1999 of 6 December 1999. It notes that section 62 of the National Employment Policy Act No. 6/1992 of 3 January 1992, as amended by the National Employment Policy (Reforms) Act of 1999, provides for the adoption of governmental programmes aimed at promoting employment among workers facing obstacles to entering the labour market, especially young first-time jobseekers, women, men older than 45 years of age and persons with disabilities. ***The Government is asked to supply information on the practical application of the above-mentioned provisions as it relates to older workers, young first-time jobseekers, and persons with disabilities.***

*Articles 2 and 3. National policy to promote equality of opportunity and treatment.* The Committee recalls that discrimination in employment and occupation is a universal phenomenon that is constantly evolving, and that some manifestations of discrimination have acquired more subtle and less visible forms. It is therefore essential to acknowledge that no society is free from discrimination and that continuous action is required to address it. Moreover, the results achieved in the implementation of the national equality policy and programmes must be periodically assessed so that they can be adapted to the population's needs, particularly for those groups that are most vulnerable to discrimination (see 2012 General Survey, paragraphs 731 and 847). ***The Committee asks the Government to indicate whether it has a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, and describe how it is implemented (legal procedures, practical measures, etc.) in each of the following spheres: (i) access to vocational training; (ii) access to employment and to particular occupations; (iii) terms and conditions of employment. The Committee asks the Government to take specific steps with a view to assessing the results of the implementation of the national equality policy and to provide information on its impact on the different sections of the population and to supply statistical data disaggregated by sex, race, ethnic origin and religion on employment and vocational training and any other information which would enable the Committee to evaluate more fully the manner in which the Convention is applied in practice.***

*Article 4. Measures affecting individuals suspected of activities prejudicial to the security of the State.* ***The Committee once again asks the Government to provide information concerning the practical application of Article 4 of the Convention, as well as specific information on the procedures establishing the right to appeal to a competent and independent body.***

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

## Fiji

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)

*Article 1(b) of the Convention. Work of equal value. Legislation*. The Committee previously urged the Government to amend section 78 of the Employment Relations Promulgation (ERP) of 2007, which does not comply with the principle of the Convention as it restricts the comparison of remuneration to men and women holding the "same or substantially similar qualifications" employed in the "same or substantially similar circumstances". The Committee notes the Government's indication in its report that section 78 of the Employment Relations Act 2007 was amended in 2015 as follows: "An employer must not refuse or omit to offer or afford a person the same rate of remuneration as are made available for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description for any reason [...]". The Committee notes with ***deep regret*** that these amendments to section 78 continue to restrict equal remuneration to "persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances". The Committee recalls once again that equal pay legislation should not only provide for equal remuneration for equal, the same or similar work, but should also address situations where men and women perform different work, requiring different qualifications and involving different circumstances, that is nevertheless work of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 673). ***The Committee once again urges the Government to take the necessary measures to ensure that the principle of equal remuneration for men and women for work of equal value is duly reflected in section 78 of the Employment Relations Act.***

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

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

*Article 1(1) of the Convention. Protection against discrimination. Public service. Legislation*. The Committee recalls that the Public Service Act of 1999 does not contain any provision linked to discrimination. In its previous comment, it noted that, following the adoption of the Public Service (Amendment) Decree, No. 36 of 2011, section 10B(2) and section 10C prohibit discrimination in all aspects of employment, based on ethnicity, colour, gender, religion, national extraction and social origin, but omitting political opinion. The Committee asked the Government to: (1) take the necessary measures to include political opinion among the prohibited grounds of discrimination listed in the Public Service

(Amendment) Decree; and (2) indicate how public service employees and applicants for public service employment are protected against discrimination based on political opinion in practice. The Committee notes the Government's indication in its report that Decree No. 36 of 2011 was amended by the Employment Relations (Amendment) Act, 2016, and that Parts 2A and 2B, including sections 10B and 10C of the Public Service (Amendment) Decree, have been repealed. The Amendment Act also amended the definition of "workers" to include contractual civil servants under the Employment Relations Act 2007 (ERA).

The Committee recalls that section 6(2) of the ERA prohibits discrimination on the grounds listed in the Convention, including the ground of political opinion. It also notes that Part I (interpretation), section 4, of the ERA provides that a worker is employed under contract of service, and that the concept of employer includes the Government, other Government entities or local authorities and a statutory authority. The Committee observes that the Public Service Act, 1999, as well as Decree No. 36 of 2011, cover employees in the public sector who are civil servants (career public servants) and that workers in the public sector who are employed under a contract of service are covered by the ERA. In that regard, it stresses once again that sections 10B(2) and 10C of Decree No. 36 of 2011 do not prohibit discrimination on the ground of political opinion. It recalls once again that, where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention. ***The Committee once again asks the Government to take the necessary measures to ensure that political opinion is included among the prohibited grounds of discrimination listed in the Public Service Act 1999. The Committee also requests the Government to indicate how in the meantime public service employees and applicants to public service employment are protected against discrimination based on political opinion in practice.***

*Enforcement and access to justice*. The Committee recalls that the Conference Committee on the Application of Standards (CAS) (International Labour Conference, 100th Session, 2011) noted that section 266 of Decree No. 21 of 2011 prohibits any action, proceeding, claim or grievance "which purports to or purported to challenge or involves the Government (…) any Minister or the Public Service Commission (…) which has been brought by virtue of or under the [Employment Relations Act]". The CAS urged the Government to ensure that government employees have access to competent judicial bodies to claim their rights and adequate remedies. Consequently, the Committee asked the Government to provide detailed information on the procedure and means of redress available to workers excluded from the scope of the ERA alleging discrimination in employment and occupation which purport to challenge or involve public authorities. The Government indicates that the Employment Relations (Amendment) Act 2016 repealed the Essential National Industries Decree 2011 (ENI) to allow civil servants and workers in statutory authorities and commercial banks to lodge their claims either through their trade unions as a trade dispute or as individual grievances. The Government adds that any worker, including civil servants, may file or lodge their employment grievance with the Mediation Services of the Ministry of Employment, Productivity and Industrial Relations, including for any matters pertaining to being discriminated against by their employer. According to the Government, in 2019, the Mediation Services received 22 grievances relating to discrimination, of which 13 were individual grievances reported by workers themselves and nine were reported by unions.

The Committee notes that, with regard to workers in the private sector, the ERA provides for a range of avenues of redress, such as the mediation services, the employment relations tribunal and the employment relations court. Regarding civil servants, the Public Service Regulations (L.N. 48 of 1999) provide in paragraph 28 that a chief executive must put in place, in his or her Ministry or department, appropriate procedures for employees to seek review of action that they consider adversely affects their employment. The Committee notes that section 266 of Decree No. 21 of 2011 may apply to both workers in the private and public sectors, as it prohibits any action, proceeding, claim or grievance "which purports to or purported to challenge or involves the Government (…) any Minister or the Public Service Commission".

The Committee further notes that the National Commission on Human Rights and Anti-Discrimination (CHRAD), established in 2009 under article 45 of the Constitution, can receive and investigate complaints of discrimination and seek to resolve them through conciliation. Where complaints remain unresolved, the CHRAD can refer these to a legal process. ***The Committee asks the Government to: (i) take the necessary measures to ensure that workers who purport to challenge the public authorities, in case of discrimination in employment or occupation have a formal avenue of redress; (ii) provide information on the application in practice of section 266 of the ERA; and to provide information on the anti-discrimination activities of the National Commission on Human Rights and Anti-Discrimination in employment and occupation; and (iii) report any cases brought before it and their outcome.***

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

# France

## French Polynesia

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

*Article 1 of the Convention. Protection against discrimination. Private sector. Legislative developments.* The Committee previously requested the Government to provide information on any measures taken to include "social origin" in the list of grounds of discrimination prohibited by the Labour Code of French Polynesia so as to cover all the grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention, and to indicate the measures adopted to ensure that workers are protected in practice against discrimination based on this ground. In order to extend workers' protection against discrimination and align it with the anti-discrimination provisions applicable in metropolitan France, the Committee also invited the Government to examine the possibility of adding "place of residence" and "particular vulnerability resulting from the economic situation [of the person] which is apparent to or known by the person committing the discrimination" to the list of grounds of discrimination prohibited by the Labour Code of French Polynesia. The Committee notes with ***satisfaction*** that Territorial Act No. 2019-28 of 26 August 2019 has amended section Lp. 1121-1 of the Labour Code by adding the phrase "including social origin" after the ground "origin". With regard to place of residence, the Government indicates that section 18 of amended Basic Act No. 2004-192 of 27 February 2004 on the Statute of Autonomy of French Polynesia, provides that "French Polynesia may adopt measures favouring access to waged employment in the private sector for any person having a sufficient period of residence on the territory or any person who is married, cohabiting or in a civil union with the latter [...]". The Government emphasizes its willingness to implement these provisions by submitting a territorial bill in the near future. ***The Committee requests the Government to provide information on the status of the territorial bill implementing section 18 of Basic Act No. 2004-192 and its impact on protection from discrimination based on "place of residence". Lastly, in view of the absence of response on this point and in order to extend workers' protection against discrimination and align it with the anti-discrimination provisions applicable in metropolitan France, the Committee once again invites the Government to examine the possibility of adding particular vulnerability resulting from the economic situation of the person apparent to or known by the person committing the discrimination to the list of grounds of discrimination prohibited by the Labour Code of French Polynesia, and requests that the Government provide information on any measures adopted in this regard.***

*Public sector.* The Committee previously requested the Government to provide information on any steps taken to include "social origin" in the list of grounds of discrimination prohibited by section 5 of the General Public Service Regulations of French Polynesia and to indicate the measures adopted to ensure that public officials are protected in practice against discrimination based on social origin. It also invited the Government to examine the possibility of adding "family situation" to the list of grounds of discrimination prohibited by this section. In addition, it requested the Government to indicate the reasons why, in French Polynesia, the list of grounds of discrimination prohibited in the public service is more limited than the list applicable in the private sector and invited the Government to harmonize the protection of public officials and workers in the private sector against discrimination in employment and occupation. With regard to social origin, the Committee notes the Government's indication that section 5 of the General Public Service Regulations of French Polynesia prohibits discrimination based on "origin", which necessarily includes "social origin". The Government also indicates that, in practice, because the rights and obligations of public officials are established through regulations, they are of a general and impersonal nature and therefore identical for all public officials in the same employment category, both at the time of their entry into employment (via competitive examination) and throughout their career. In this regard, the Committee recalls that social origin is one of the seven prohibited grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention and that, when legal provisions are adopted to give effect to the principle of the Convention, they must include as a minimum all the grounds of discrimination enumerated in this Article. It also recalls that: (1) as it noted in the 2012 General Survey on the fundamental Conventions (paragraphs 802–804), in some countries, persons from certain geographic areas or socially disadvantaged segments of the population (other than persons from ethnic minority groups) face exclusions with respect to recruitment, without any consideration of their individual merits; and (2) given the persistent patterns of discrimination on the grounds set out in the Convention, in most cases there is a need for a comprehensive legislation containing explicit provisions defining and prohibiting direct and indirect discrimination on at least all of the grounds set out in the Convention, and in all aspects of employment and occupation, in order to ensure the full application of the Convention (see 2012 General Survey, paragraph 854). Indications of rising social inequalities in some countries have highlighted the continuing relevance of addressing discrimination based on class and socio-occupational categories. In this respect, the Committee recalls that discrimination and lack of equal opportunity based on social origin refers to situations in which an individual's membership in a class, socio-occupational

category or caste determines his or her occupational future, either because he or she is denied access to certain jobs or activities, or is assigned only certain jobs. Lastly, the Committee notes that, as indicated in the previous paragraph, the Labour Code of French Polynesia was amended in 2019 to state that the term "origin" included "social origin".

With regard to "family situation", the Government states that it is not formally opposed to adding this to the list of grounds of discrimination prohibited by section 5 of the General Public Service Regulations of French Polynesia if it were necessary to do so. However, referring to the Committee's 1996 General Survey on equality in employment and occupation, it notes that the prohibition of discrimination on the ground of sex, provided for in section 5, paragraph 1, of the Regulations, also includes discrimination based on family situation. Lastly, the Committee welcomes the Government's statement that it is not opposed to reviewing the list of prohibited grounds of discrimination established in section 5 of the General Public Service Regulations, based on the grounds provided for in the Labour Code of French Polynesia. ***The Committee requests the Government to indicate the steps taken to review the list of prohibited grounds of discrimination established in section 5 of the General Public Service Regulations of French Polynesia with a view to harmonizing its content with the list of grounds enumerated in*** the ***Labour Code, including with respect to "social origin".***

*Sexual harassment and "moral" harassment. Private and public sectors.* In its previous comment, the Committee requested the Government to provide information on the application in practice of the relevant provisions of the Labour Code and the General Public Service Regulations of French Polynesia on sexual or "moral" harassment. It notes the information provided by the Government.

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

## Gabon

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1961)

*Article 1(b) of the Convention. Equal remuneration for men and women for work of equal value. Legislation.* The Committee recalls that for very many years it has been emphasizing the need to amend section 140 of the Labour Code, the provisions of which are too restrictive in relation to those of the Convention and do not allow the comparison of work that is of a different nature and performed under different conditions (skills/qualifications, responsibilities, effort, conditions of work), but which could be of equal value overall. The Committee recalls that section 140 makes the application of equal remuneration conditional on the existence of "equal conditions of work, skills and output", on the one hand, and work "of equal value and of the same nature", on the other. The Committee notes the Government's indication in its report that the Labour Code is currently being updated, which is a priority project for the Government. It indicates that section 140 will be modified and become section 171 of the draft Labour Code, which provides that: "For work of equal value, remuneration shall be equal for all workers, irrespective of their origin, opinion, sex and age. Equal remuneration for men and women for work of equal value and of the same nature refers to the remuneration rates set without discrimination on the basis of sex." The Committee notes with ***regret*** that this wording still does not provide for equal remuneration for men and women for work of equal value as set out in the Convention, as it retains the concept of "the same nature". It also emphasizes that the wording in the draft text of section 171 "of equal value of vocational skills and output" limits the application of equal remuneration to a comparison of the value of vocational skills and output. In this regard, the Committee recalls that in order to eliminate discrimination in relation to remuneration, which inevitably arises if the value of the work performed by men and women is not recognized free from any sexist bias, it is essential to compare the value of work in occupations in which the work may require different types of skills and also involve different levels of responsibility and conditions of work, but which are nevertheless of equal value overall. It emphasizes in this respect that the concept of equal "value" as set out in the Convention permits a broad scope of comparison, including "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value. This is crucial for the full application of the Convention as, in practice, men and women are often not engaged in the same jobs. Furthermore, the Committee recalls that, as effective application of the principle of the Convention is needed, where women are more heavily concentrated in certain sectors or occupations, there is a risk that the possibilities for comparison at the enterprise or establishment level will be insufficient (see the 2012 General Survey on the fundamental Conventions, paragraphs 673, 675 and 698). ***The Committee therefore urges the Government to take the necessary measures to ensure that the future Labour Code gives full expression and full effect to the principle of equal remuneration for men and women for work of equal value, without limitations that are contrary to the Convention, and to provide information on any progress achieved in this regard.***

*Articles 2 and 3. Determination of rates of remuneration. Public service. Objective job evaluation.* In its previous comment, the Committee requested the Government to explain in detail the methods and criteria used to determine pay levels following the introduction in 2015 of a new pay system in the public service, in order to ensure that jobs principally occupied by women have not been undervalued in relation

to those mainly occupied by men. The Committee notes the information provided by the Government to the effect that the calculation of the pay of a State official takes into account the following elements: the basic pay, the reference indicative pay scale and the indicative scale of bonuses. These elements are uniform, calculated and paid pro rata based on the days worked, although the final remuneration may vary as it is based on collective results, the individual performance of the official and the payment of different bonuses and additional allowances. Noting that, according to the detailed explanations provided by the Government, one of the important components of final remuneration is based on the individual performance of officials, the Committee recalls that there is a significant difference between the concept of the evaluation of professional performance, which aims to evaluate the manner in which a particular worker carries out the job (output), and the concept of objective job evaluation, which evaluates the job (and not the worker) with a view to measuring the relative value of jobs that do not have the same content. The Committee also recalls that *Article 3* of the Convention presupposes the use of appropriate methods for the objective evaluation of jobs. As women are very often engaged in different jobs to men, it is necessary to have a method of comparison through which it is possible to measure and compare the relative value of different jobs on the basis of objective and non-discriminatory factors (such as the required skills/qualifications, effort, responsibilities and working conditions) to prevent any sexist bias in their evaluation. Experience shows that skills that are often considered to be "female", such as manual dexterity and those required in the caring professions, are frequently undervalued or even overlooked, in comparison with traditionally "male" skills, such as heavy lifting, which contributes to perpetuating the undervaluation of women's jobs and to the widening of the pay gap between men and women (see the 2012 General Survey, paragraphs 695 to 701). ***The Committee requests the Government to indicate the measures adopted to ensure that the pay system for employees of the public service established in 2015 is free of gender bias. Noting the Government's indication that the jobs predominantly held by women have not been undervalued in relation to those occupied by men, the Committee requests it to provide information on the methods used to evaluate and establish the classification of the various jobs in the public service and to provide the corresponding salary scales, disaggregated by sex.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

*Article 1(1) of the Convention. Definition of discrimination. Legislation.* The Committee welcomes the inclusion in the draft new Labour Code of a definition of the concept of "discrimination" that is identical to that of the Convention. ***The Committee hopes that the draft text of the new Labour Code will soon be adopted and promulgated and requests the Government to provide information on the progress achieved in this respect. It also requests the Government to take the necessary measures to disseminate these new provisions, once they have been adopted, to employers, workers and their respective organizations and to those responsible for the enforcement of the legislation and to provide a copy of the text.***

*Articles 1(1)(a) and 3. Discrimination on the basis of sex. Legislation.* Further to its previous comment concerning the lack of conformity of certain provisions of the Civil Code that are in force (sections 253, 254 and 261) with the provisions of the Convention, the Committee notes the Government's indication in its report that the Civil Code is still under revision and that the Committee's comments will be examined. The Committee recalls that laws governing personal and family relations which do not yet provide for equal rights of men and women also continue to have an impact on the enjoyment of equality with respect to work and employment (2012 General Survey on the fundamental Conventions, paragraph 787). ***The Committee once again urges the Government to take the necessary measures to ensure that the provisions of the Civil Code that have a discriminatory impact on women's employment, namely sections 253, 254 and 261, are repealed and to provide a copy of the new Civil Code once it has been adopted and promulgated.***

With regard to night work by women, as regulated by sections 167 and 169 of the Labour Code, the Committee notes that, in the draft new Labour Code, the provisions prohibiting night work by women in general have been removed, and that the protection measures only concern pregnant women, which is not incompatible with the Convention, insofar as they are strictly limited to the protection of maternity and not based on stereotypes concerning their capacities and role in society. ***While welcoming the withdrawal of the provisions prohibiting the principle of night work of women in the draft Labour Code, the Committee requests the Government to examine the possibility of the adoption in parallel of accompanying measures to assure the safety of workers, both men and women, during night work and measures for the development of adequate means of transport.***

*Article 2. Equality of opportunity and treatment of men and women in employment and occupation. Constitution.* The Committee welcomes Act No. 001/2018 of 12 January 2018 revising the Constitution of the Republic of Gabon, which amends several articles of the Constitution in support of gender equality, principally in relation to elections, and provides that "the State shall promote equal access by women and men to electoral office and to political and professional responsibilities" (article 24). ***Welcoming the will of***

***the Government to promote gender equality at the highest level, the Committee requests the Government to provide information on the implementation of article 24 of the Constitution, which promotes the equal access of women and men to professional responsibilities, as well as equal access to political responsibilities, in law and practice, and on any specific measures adopted for this purpose.***

*National policy on equality.* The Committee previously requested the Government to adopt measures to: (1) take effective action to combat stereotypes regarding women's aspirations, preferences and occupational capacities; and (2) resolve the difficulties faced by women in gaining access to resources and means of production, and particularly credit and land, and to encourage women's entrepreneurship. The Committee notes that the Government refers once again to the creation of a platform wholly dedicated to women entrepreneurs, the "Women's Business Centre", in order to provide support to women wishing to start up their own enterprises. The Committee also notes the Government's indication that it has introduced a Women's Day on 17 April each year and that it has decreed that 2015–25 shall be the Decade of the Women of Gabon. According to the information provided by the Government in its 2020 report to UNESCO on the application of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, ratified in 2007, the objective of the Decade of the Women of Gabon is the autonomy of women, and the expected results are training, improvement and the deep-rooted transformation of the condition of women at all levels (legal, political, economic and social). The Government adds in the report that the National Advisory Commission of the Decade of the Women of Gabon has been created in this context and that it is engaged in the collection of data on the ground throughout the national territory with a view to improving understanding of the situation of women. ***The Committee notes these initiatives and requests the Government to provide the results of the national data collection exercise on the condition of the women of Gabon undertaken by the National Advisory Commission of the Decade of the Women of Gabon. It also requests the Government to provide information on: (i) the measures adopted or envisaged to promote equality of opportunity and treatment for men and women, including in relation to employment and occupation; and (ii) information (including statistics) on the activities of the platform for women entrepreneurs since its establishment. In the absence of a response on the following points raised in its previous comments, the Committee reiterates its request concerning the measures adopted to: (i) combat effectively stereotypes regarding women's aspirations, preferences and professional capacities and their role in society and to enable them to gain access to a broader range of jobs and occupations (through vocational guidance and training free from gender bias); and (ii) resolve the difficulties faced by women in gaining access to resources and means of production, and particularly credit and land. The Government is also requested to provide information on the activities of the Ministry of Equality of Opportunity in relation to the promotion of equality of opportunity and treatment for men and women in employment and occupation.***

*Promotion of equality of opportunity and treatment without distinction on grounds other than sex.* In its previous comments, the Committee requested the Government to formulate and implement a national policy on equality of opportunity and treatment without distinction on grounds of race, colour, religion, political opinion, national extraction or social origin. The Committee notes the Government's indication that since 2016 it has been developing its policy of equality of opportunity and that many seminars have been organized since then to reinforce capacities to combat more effectively undue privilege and social inequality. In this regard, the Committee recalls that the primary obligation of ratifying States is to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination in this respect. It also wishes to emphasize that the implementation of a national equality policy in relation to employment and occupation presupposes the adoption of a range of specific measures, which generally consist of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes and awareness-raising (2012 General Survey, paragraphs 841 and 848). ***In light of the above, the Committee urges the Government to indicate any obstacles encountered in completing the formulation of a policy of equality of opportunity, which it indicates that it has been developing since 2016. It also requests the Government to indicate whether it is planned that the national equality policy will also cover the other grounds of discrimination prohibited by the Convention, with an indication of the specific strategies and measures envisaged or adopted with a view to: (i) combating all forms of discrimination on the basis of race, colour, religion, political opinion, national extraction and social origin; (ii) promoting equality of opportunity and treatment in employment and occupation; and (iii) monitoring and evaluating regularly the results achieved as a basis for reviewing and adapting existing measures and strategies, where necessary.***

*Articles 2, 3(d) and 5. Equality of opportunity for men and women in the public service. Special affirmative measures. Quotas.* With reference to the under-representation of women at the higher categories (A1 and A2) of the public service, the Committee notes with ***interest*** the adoption of Act No. 09/2016 of 5 September 2016 establishing quotas in favour of women and young persons, and particularly a quota under which 30 per cent of higher level State positions are reserved for women. ***The Committee requests the Government to indicate the measures taken in practice for the implementation of this quota***

***and to provide statistical data on personnel in the public service disaggregated by gender and category, with a view to measuring the impact of this measure on the representation of women in the higher categories of the public service. In the absence of information on this point, the Committee once again requests the Government to provide the conclusions of the audit of the public service carried out in 2016.***

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

## Georgia

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

The Committee takes note of the observations of the Georgian Trade Union Confederation (GTUC) received on 6 October 2020, reiterating its observations received on 30 September 2019, which address issues related to the application of the Convention.

*Articles 1 and 2 of the Convention. Legislation.* Recalling that the principle of equal remuneration for men and women for work of equal value is not properly reflected in the legislation, the Committee previously welcomed the Government's indication that the Ministry of Labour, Health and Social Affairs was working on amending the labour legislation to implement Directive 2006/54/EC of 5 July 2006, which provides that, for the same work or for work of equal value, direct and indirect discrimination on the grounds of sex with regard to all aspects and conditions of remuneration must be eliminated. It encouraged the Government to ensure that labour legislation give full legislative expression to the principle of equal remuneration for men and women for work of equal value, with a view to ensuring the full and effective implementation of the Convention without delay. It also urged the Government to take the necessary steps to amend section 57(1) of the Law on the Public Service (2015) to capture the concept of "work of equal value" so as to ensure that public officials covered by the Law are entitled not only to equal remuneration for equal work, but also for work that is entirely different but nonetheless of equal value. The Committee notes, from the Government's report, the adoption of amendments to the labour legislation in 2019 and in September 2020. It notes with ***regret*** that the Government did not use these opportunities to include a provision giving full legislative expression to the principle of the Convention. The Committee notes the Government's indication that the new National Strategy of Labour Market and Employment Policy 2019-2023 contains an action plan to ensure that both, at the legislative and practical levels, employees receive equal remuneration for "equally valuable work". Recalling that section 57(1) of the Law on the Public Service provides that the system of remuneration for public officials is based on the "principles of transparency and fairness, which means the implementation of equal pay for equal work", the Committee notes that the Government considers this provision to be in line with the principle of the Convention as coefficients are determined not only on the similarity of functions but also on responsibility, complexity, relevant competencies, qualifications and work experience which, according to the Government, implies the evaluation of the value of the work. Despite the Government's reassurance, the Committee recalls that when legal provisions are narrower than the principle laid down in the Convention and do not expressly include the concept of "work of equal value", such provisions hinder progress in eradicating gender-based pay discrimination (see General Survey on the Fundamental Conventions, 2012, paragraphs 676-679). ***Recalling that the Convention has been ratified in 1993, the Committee once again urges the Government to amend the labour legislation, in cooperation with the social partners and the Council for Gender Equality, in order to give full legislative expression to the principle of "equal remuneration for men and women for work of equal value", with a view to ensuring the full and effective implementation of the Convention without delay. Noting the Government's reiterated statement that it intends to submit legislative proposals to the Parliament implementing Directive 2006/54/EC of 5 July 2006, the Committee requests the Government to provide information on any progress made in this regard. Furthermore, regarding the public sector, the Committee once again urges the Government to take the necessary steps to amend section 57(1) of the Law on the Public Service (2015) to capture the concept of "work of equal value" so as to ensure that public officials covered by the Law are entitled not only to equal remuneration for equal work, but also for work that is entirely different but nonetheless of equal value. The Government is requested to provide information on the progress achieved in this regard.***

*Article 2. Measures to address the gender pay gap and promote equal remuneration.* In its previous comment, the Committee requested the Government to provide information on: (1) the measures taken or envisaged directly aimed at reducing the gender pay gap (encouraging the Government to continue its efforts in identifying and addressing the underlying causes of inequalities in remuneration and to promote women's access to a wider range of job opportunities at all levels); (2) the awareness-raising activities undertaken to promote equal remuneration for work of equal value; and (3) statistical data on men's and women's monthly and hourly wages and additional allowances, by economic sector, as well as data on the number of men and women employed in these sectors. The Committee notes the Government's indication that the Gender Equality Council is working on the elaboration of a methodology to calculate the gender pay gap and decrease inequality. It also notes the data provided by the Government on the average monthly earnings by occupation for 2017 and by sector of activity for 2016,

2017 and 2018. From this information, the Committee notes that in most sectors of activity, there has been no improvement in reducing the gender pay gap between 2016 and 2018, and that it remains high in nearly all sectors of activity. In particular, it notes that in 2018, in financial and insurance activities, men earned on average significantly more than women (men earned 3,461 Georgian lari (GEL) while women earned GEL1,498). The Committee notes, from the GTUC's observations, that the gender pay gap can be explained by horizontal and vertical gender segregation, as well as by the strong gender stereotypes, the unequal division of unpaid agricultural and domestic work, and the lack of gender-responsive services and programmes. The GTUC alleges that although there is almost no gap between male and female educational attainment, only 52.9 per cent of women are reportedly employed compared to 67.1 per cent of men. The Committee also notes the GTUC's observation that, according to a survey conducted by the Centre for Social Studies, gender disparities also exist in the receipt of benefits and other wage components: 66 per cent of men (eligible for bonuses/compensations) got bonuses, compared to 34 per cent of women; and 60 per cent of men got premiums, compared to 41 per cent of women. ***Given the persisting horizontal and vertical segregation prevailing in the country, the Committee asks the Government to step up its efforts to identify and properly address the underlying causes of inequalities in remuneration, such as gender discrimination, gender stereotypes, and occupational segregation and to promote women's access to a wider range of job opportunities at all levels, including top management positions and higher paying jobs. Noting the lack of information provided in this regard, the Committee reiterates its request that the Government provide information on the specific measures taken or envisaged in the framework of the State Concept on Gender Equality and the Gender Equality Council Action Plan 2018–20 directly aimed at reducing the gender pay gap. Such measures may include, for example, undertaking sensitization programmes and awareness-raising activities to overcome traditional stereotypes regarding the role of women in society or adopting measures on shared parental leave, and affordable and available childcare services. The Committee further requests the Government to provide information on any awareness-raising activities undertaken to promote equal remuneration for men and women for work of equal value, including with respect to bonuses, premiums and other additional wage allowances. Finally, the Government is requested to continue to provide statistical data on men's and women's monthly and hourly wages and additional allowances, according to economic sector, as well as data on the number of men and women employed in these sectors.***

*Enforcement.* The Committee previously requested the Government: (1) to enhance the capacity of the competent authorities to identify and address cases of pay inequalities between men and women for work of equal value; (2) to examine whether the applicable substantive and procedural provisions, in practice, allowed claims to be brought successfully; (3) to provide information on the effective enforcement of the principle of the Convention in practice; and (4) to provide information on relevant decisions handed down by the courts or other competent bodies, as well as any cases regarding unequal remuneration handled by the Office of the Public Defender. It notes the Government's commitment to re-establishing a fully-fledged labour inspectorate. In this regard, it notes with ***interest*** the adoption, in September 2020, of a new Labour Inspection Law. The Committee also notes the Government's statement that in February 2019, a new law was adopted on occupational safety and health and that the law extends the mandate of labour inspectors, enabling them to conduct unannounced inspections in enterprises in all economic sectors and to impose sanctions on identified violations. The Committee further notes the Government's indication that the number of labour inspectors was brought to 40 and would be increased to 100 during 2019-2020. The Government indicates that three trainings were provided to a total of 47 judges on the topic of "International labour standards and the Labour Code", and one training on the same topic was held for 15 court officials. ***The Committee asks the Government to provide information on the activities of the labour inspectorate and its findings with regard to the application in practice of equal remuneration for men and women. The Committee also asks the Government to examine whether the applicable substantive and procedural provisions, in practice, allow claims to be brought successfully. The Committee further asks the Government to take concrete steps to ensure the effective enforcement of the principle of the Convention in practice, for example through training activities of the labour inspectorate, as well as of judges and other public officials, related specifically to the principle of equal remuneration between men and women for work of equal value. The Committee also asks the Government to provide information on: (i) the content and duration of any training for the 47 judges that addressed the language and application in practice of the principle of equal remuneration for men and women; (ii) decisions handed down by the courts or other competent bodies with regard to the application of the principle of the Convention; and (iii) any cases regarding unequal remuneration handled by the Office of the Public Defender.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee takes note of the observations of the Georgian Trade Union Confederation (GTUC) received on 6 October 2020, reiterating its observations received on 30 September 2019, which address

issues related to the application of the Convention. The Committee requests the Government to provide its comments in this respect.

*Article 1(1)(a). Discrimination based on sex. Sexual harassment.* In its previous comment, the Committee asked the Government to take steps to: (1) prevent, together with workers' and employers' organizations, sexual harassment in the workplace; and (2) ensure that section 6(1)(b) of the Law on Gender Equality is effectively enforced (and to provide information on any cases of sexual harassment and their outcomes). It also asked the Government to consider including in the Labour Code a provision explicitly defining and prohibiting sexual harassment in the workplace. In this regard, the Committee notes the GTUC's repeated observation that sexual harassment remains one of the most under-reported forms of discrimination at work. It notes the Government's indication concerning the adoption in 2017 of Ordinance No. 200 defining general rules of ethics and conduct in the public service, which prohibits sexual harassment and establishes the requirement for public officials to be aware of this phenomenon and the prohibition of such practices, both in the workplace and in the public domain, and to remain informed of internal and general reporting procedures. The Committee also notes the Government's reference to the 2019 legislative amendments introducing a definition and prohibition of sexual harassment in the Law on the Elimination of All Forms of Discrimination, as "any unwanted verbal, non-verbal or physical behaviour of a sexual nature with the purpose of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person". The Committee further notes that the Labour Code was amended in September 2020 to define sexual harassment as "the direct or indirect harassment of a person aimed at or resulting in impairing the dignity of that person, or at creating an intimidating, hostile, humiliating, degrading or abusive environment for him/her, and/or creating the circumstances for a person directly or indirectly causing their condition to deteriorate as compared to other persons in similar circumstances". The Committee notes with ***interest*** the introduction of a definition and prohibition of sexual harassment in the Labour Code, but notes that this definition does not cover the full range of forms of behaviour that constitute sexual harassment in employment and occupation (2012 General Survey on the fundamental Conventions, paragraphs 789 and 792). The Government also indicates that, between 2014 and 2018, the Public Defender reviewed 15 cases of sexual harassment and issued recommendations in four cases, and that the courts only dealt with two cases. In light of the limited number of infringements identified by the courts and the Public Defender, the Committee recalls that the absence or a low number of complaints regarding sexual harassment does not necessarily indicate that this form of sex discrimination does not exist; rather, it is likely to reflect the lack of an appropriate legal framework, the lack of awareness, understanding and recognition of this form of sex discrimination among government officials, and workers and employers and their organizations, as well as the lack of access to or the inadequacy of complaints mechanisms and means of redress, or fear of reprisals (see 2012 General Survey, paragraph 790). ***The Committee therefore asks the Government to take the necessary steps to ensure that the prohibition of sexual harassment is effectively enforced by the courts and the Public Defender, and to continue providing information on any cases of sexual harassment dealt with by the courts or any other competent authorities, including information on the sanctions imposed and remedies granted. It also asks the Government to take steps to include in the labour legislation a complete definition of sexual harassment, including both quid pro quo and hostile work environment, and to provide information on any progress made in this regard. Noting that the Government's report is silent on the subject, the Committee again asks the Government to take practical measures, together with workers' and employers' organizations, to prevent sexual harassment at work, including through the development of workplace policies and awareness-raising among workers and employers, and to report on the progress made in this regard.***

*Discrimination based on sexual orientation and gender identity.* The Committee recalls that section 2 of the Labour Code prohibits discrimination on the basis of sexual orientation and gender identity and expression. In this regard, it notes from the 2019 report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, that discrimination based on sexual orientation and gender identity is pervasive in Georgia: beatings are commonplace, harassment and bullying constant, and exclusion from education, work and health settings appear to be the norm. According to the findings of the Independent Expert, discrimination based on sexual orientation remains common in the workplace and a study has found that, in the lesbian, gay, bisexual, trans and gender diverse community, one person out of four has been denied employment due to their sexual orientation or gender identity (A/HRC/41/45/Add.1, 15 May 2019, paragraphs 31 and 72). ***The Committee asks the Government to provide information on: (i) any steps taken or envisaged to prevent and address discrimination based on sexual orientation and gender identity in employment and occupation, including statutory and awareness-raising measures; and (ii) prosecutions brought and penalties imposed for violations of section 2 of the Labour Code.***

*Article 1(3) of the Convention. Discrimination in recruitment.* The Committee recalls that, according to the GTUC's observations, although section 2(3) of the Labour Code prohibits discrimination in recruitment, such cases of discrimination remain common practice and are often under-reported because the employer is not legally required to give reasons for a decision not to hire a candidate (section 5(8) of the

Labour Code). The Committee notes from the Special Report of the Public Defender on the Fight Against Discrimination, its Prevention and the Situation of Equality (2018), that there is no express prohibition of discriminatory criteria in job advertisements and that such criteria are commonly used. The Public Defender proposes the introduction of legislative regulations expressly prohibiting discriminatory requirements in pre-contractual relations. The Committee notes the Government's statement in its report that amendments were made to the Labour Code in February 2019 and notes with ***interest*** that an employer can no longer ask a candidate for information that is not related to the performance of the job or to the evaluation of the candidate's ability to perform specific work, such as his/her religion, faith, disability, sexual orientation, ethnic affiliation or pregnancy status (section 5(1) of the Labour Code). The Committee also notes the Government's indication that the Gender Equality Council is drafting further amendments to the Labour Code to improve women's rights in relation to employment and occupation. In the framework of this legislative review, it is proposed that an employer should be required to substantiate his/her decision not to hire when there is an assumption of discrimination. The Committee notes the Government's statement that eight cases have been investigated by the Public Defender's Office on the basis of alleged discrimination in pre-contractual relations during the period 2015–18, but no indication is given as to the outcomes of these cases. ***The Committee asks the Government to provide information on any developments regarding the adoption of the draft legislative amendments proposed by the Gender Equality Council. The Committee also asks the Government to: (i) provide information on the application of new section 5(1) of the Labour Code in practice; (ii) continue taking steps to eliminate discriminatory practices in recruitment, including in job advertisements; and (iii) provide information on the number and nature of cases handled by the courts or the Office of the Public Defender regarding discrimination in pre-contractual relations, including the sanctions imposed and remedies granted.***

*Article 2. Equality of opportunity and treatment for men and women.* The Committee previously asked the Government to step up its efforts to promote gender equality specifically in the field of employment and occupation and to take steps to address the barriers to women's access to the broadest possible range of sectors and industries and to promote a more equitable sharing of family responsibilities between men and women. It requested information on the implementation of the outstanding activities of the 2014–16 National Action Plan on Gender Equality, as well as on any specific activities carried out by the Gender Equality Council in the field of employment and occupation. The Committee notes the Government's indication that the Ministry of Economy and Sustainable Development, in partnership with the public agencies Enterprise Georgia and the Georgian Innovation and Technology Agency, is implementing projects to promote women's entrepreneurship and their role in managerial positions by: (1) financially supporting start-ups and/or helping the expansion of existing businesses; and (2) providing training courses and individual consultancy on business management. The Government states that the Gender Equality Council identified the "economic empowerment of women" as a priority for 2019 and initiated two thematic enquiries focusing on the barriers women face when participating in state economic programmes and in access to vocational education. The Committee also takes note of the Gender Equality Council's Action Plan for 2018–2020. However, the Committee notes from the GTUC's observations that, despite positive steps to improve the labour regulations, the issues of women's promotion (occupational gender segregation), women's economic empowerment and equal participation in economic development, as well as proper pay, remain problematic. The GTUC alleges that gender inequalities are most challenging in rural areas and that gender stereotypes, the unequal division of unpaid agricultural and domestic work and a lack of gender-responsive services and programmes limit women's abilities to acquire new skills, develop agricultural or other businesses and earn a sustainable income. In addition, the GTUC states that women entrepreneurs continue to face challenges in access to finance, information, training, access to business networks, as well as the reconciliation of work and family responsibilities. Referring to the official statistical data, the GTUC indicates that women comprise only 29 per cent of public service employees and only 21.8 per cent of managerial positions in the public sector. ***The Committee asks the Government to pursue its efforts to promote gender equality in employment and occupation, including through measures to address directly stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family. The Committee again urges the Government to take steps to address the legal and practical barriers to women's access to the broadest possible range of sectors and industries, at all levels of responsibility, and to promote a more equitable sharing of family responsibilities between men and women, and to report on the results achieved in this regard. The Committee further asks the Government to provide information on the conclusions and recommendations of the Gender Equality Council following its 2019 thematic enquiries, as well as on the results of its Action Plan 2018–2020 in the field of gender equality in employment and occupation. The Committee asks the Government to provide statistics on the situation of men and women in different occupations, including at the decision-making level, and in all sectors of the economy.***

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

# Germany

## Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the German Confederation of Trade Unions (DGB) received on 21 November 2019. It further notes the additional observations of the DGB received on 10 November 2020. ***The Committee requests the Government to provide its comments with respect to the additional observations.***

*Article 2 of the Convention. Wage transparency*. The Committee previously noted the adoption of the Act promoting remuneration transparency between women and men (Transparency of Remuneration Act), 2017, which introduces: (1) an individual entitlement for employees in establishments with more than 200 employees to obtain information on the median monthly gross salary of at least six employees of the other gender who perform the same work or work of equal value, as well as on the criteria and procedure used for determining the remuneration; and (2) regular reporting about the measures taken to promote gender equality and create equal pay for women and men for private sector employers with more than 500 employees, which are also encouraged to use internal company evaluation procedures to assess their remuneration system. It requested the Government to provide information on: (1) the implementation of the Transparency of Remuneration Act; and (2) the proportion of companies and employees covered by these provisions. The Committee notes the Government's statement, in its report, that several guides, leaflets and sample forms were disseminated to raise awareness of the provisions of the Transparency of Remuneration Act, and advice were provided to specific target groups, including workers and employers. The Government indicates that, as a result of an assessment carried out on the implementation of the Act in 2019, it appears that: (1) only 4 per cent of employees in enterprises with over 200 employees have made an information request; (2) 45 per cent of companies surveyed have voluntarily reviewed their in-house pay structures; and (3) 44 per cent of companies with reporting obligations indicated they were complying with the reporting obligation and 40 per cent were planning to do so. The Committee notes that, in its observations, the DGB considers that the assessment reveals that further amendments should be introduced in the Transparency of Remuneration Act, more particularly in order to: (1) ensure the right to information to all workers irrespective of the size of the company; (2) introduce an obligation to carry out certified evaluation procedures even for companies with less than 500 employees; (3) standardize the content and form of reporting obligations; (4) provide for sanctions in case of non-compliance of these requirements; and (5) introduce a right to bring a collective action so that the burden of enforcing their rights does not fall on individual workers. In that regard, the Committee notes the Government's indication that, in a 2019 ruling (No. 16 Sa 983/18), the Berlin-Brandenburg State Labour Court decided that a woman journalist alleging pay discrimination was not able to exercise the individual right of information under the Transparency of Remuneration Act as, being a freelance worker, she was only a "quasi-employee" and not a "regular employee". It however notes that, in its supplementary information, the Government indicates that following the claimant's appeal to the Federal Labour Court, it was finally decided that the claimant was able to request information from the defendant on the criteria and procedures for wage-setting as she was, as a freelance employee, a "worker" within the meaning of section 5(2)(1) of the Act. ***The Committee asks the Government to continue to provide information on the implementation of the Transparency of Remuneration Act, including any assessment made of the level of compliance with the statutory reporting requirements on gender equality and equal pay at the company level, and any actions taken to address gender wage gaps revealed, and the impact thereof. It also asks the Government to provide information on: (i) any measures taken to enhance the implementation of the Act, including by raising awareness of workers, employers and their respective organizations about its provisions and remedies available; (ii) any measures envisaged to overcome obstacles to its effectiveness that may have been identified by the assessments carried out or the social partners; as well as (iii) the number of companies of more than 200 employees and of more than 500 employees in the country, as well as the proportion of the workforce covered by these undertakings.***

*Articles 2 and 3. Assessing and addressing the gender pay gap.* The Committee previously noted the measures implemented by the Government to combat vertical and horizontal occupational gender segregation of the labour market, but expressed concern at the persistent high level of the gender pay gap. It requested the Government to strengthen its efforts in order to reduce the gender pay gap both in the public and private sectors, and address its underlying causes. The Committee notes, from the statistical information provided by the Government, that the unadjusted wage differentials between men and women slightly decreased from 21 per cent in 2017 to 20 per cent in 2019, while the gender pay gap remained unchanged in the public sector, being still estimated at 9 per cent in 2019. Clear variations still persist between the regions (21 per cent in the western part of the country, compared to 7 per cent in the eastern part of the country). The Committee notes that, in 2019, pay differentials between women and men were still particularly wide in scientific and technical activities (29 per cent); financial and insurance

services (28 per cent); as well as information and communication (24 per cent) and manufacturing (23 per cent). It further notes the Government's statement that a number of causes of pay inequality have been identified among which: different choices of occupations, working hours, low representation of women in leadership positions and family-related career breaks and unpaid care work. In that regard, the Government refers to its comments made on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) on occupational gender segregation and reconciliation of work and family responsibilities. It notes that, in its observations, the DGB expresses concern at persistent stereotyped assumptions that the main responsibility for family care lies with women, which results in financial losses, career breaks and higher levels of women's participation in part-time work and "mini-jobs", thus adversely affecting their remuneration and pension levels. The Committee notes that, in its supplementary information, the Government indicates that a three-year programme "Strengthen enterprises, promote pay equality" was launched in July 2020 to embed the implementation of the pay equality requirement in enterprises as the core of a comprehensive company personnel policy. The Government adds that it will be supporting regular company discussions on the topic of pay equality, developing and awarding a label denoting fair employers and providing specific assistance on the subject of equal treatment and equality at work, including by providing examples of best practices. The Committee welcomes the initiatives implemented by the Government which contributed to the slight decrease in the gender pay gap. It however notes that: (1) the gender pay gap still remains as high as 21 per cent, being still one of the highest in the European Union (6 percentage points above the European Union average) ; and (2) according to the 2019 Structures of Earnings Survey, when women have the same formal qualifications and otherwise identical qualities as men, the pay gap between women and men is still 6 per cent in 2019, which was considered as an indication of latent discrimination against women in the labour market. ***The Committee urges the Government to strengthen its efforts to eliminate the gender pay gap, including by addressing the differences in remuneration that may be due to gender discrimination. It further asks the Government to provide: (i) information on the proactive measures implemented to that end, both in the public and private sectors, including by enhancing women's access to jobs with career prospects and higher pay; (ii) information on any assessment made of the impact of such measures, including of the results of the "Strengthen enterprises, promote pay equality" programme; as well as (iii) statistical information on the earnings of men and women, disaggregated by economic activity and occupation, both in the public and private sectors.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the German Confederation of Trade Unions (DGB) received on 21 November 2019. It further notes the additional observations of the DGB received on 10 November 2020. ***The Committee requests the Government to provide its comments with respect to the additional observations.***

*Articles 1(1)(a). 2 and 3 of the Convention. Non-discrimination, equality of opportunity and treatment irrespective of race, colour or national extraction.* The Committee previously noted the persistent segregation and discrimination faced by minorities, including the Sinti, Roma and people of African descent, in education and employment and requested the Government to provide information on the measures taken to address them. The Committee notes the Government's statement, in its report, that the situation of persons with a migration background has improved slightly, but remains difficult. The Government indicates that the difficult situation of persons with a migration background in the labour market is due to several causes, including the lack of German language skills, low education, little or outdated work experience, lack of knowledge about the German labour market and discrimination. The Committee welcomes the Government's indication that, in the framework of the National Action Plan on Integration (NAP-I), several programmes focusing on the labour market integration of persons with a migration background continue to be implemented. As a result, numerous large enterprises have already made diversity issues an essential part of their human resource development strategies and many small and medium-sized enterprises have recognized the benefits of diversity in their workforce. The Committee also welcomes the various initiatives taken to improve qualifications and skills for persons with a migration background, including the establishment of regional skilled worker networks. Furthermore, the Committee notes that the Government indicates that: (1) the Federal Government's Integration Commissioner and the Federal Ministry for Economic Affairs and Energy are working together with various actors, within the "Diversity in the Economy" Forum, to support enterprises with intercultural openness and diversity management, the results of which will be presented at the 13th Integration Summit in early 2021; and (2) work was launched in May 2019 to develop the Integration in the Labour Market Forum, which focuses inter alia on the promotion of vocational training, protection against precarious and exploitative employment, the involvement of women migrants and women refugees in paid work and

support for career promotion. The Committee also notes, more particularly, the implementation of the "Strong in the workplace – Mothers with a migration background get on board" (2015–2022) programme (funded by the European Social Fund), which aims to promote access to paid work, in particular through coaching, qualifications or language courses. To date, the federal programme has been able to reach over 10,000 participants. In that regard, the Committee notes that, in its observations, the DGB welcomes the programmes implemented by the Government to enhance the integration of persons with a migration background, but highlights that the gender perspective would need to be more strongly reflected.

With regard to the public service, the Committee notes the Government's statement that it is aware of its responsibility as an employer and intends to increase the percentage of staff members with a migration background. In that regard, the Committee notes that, according to a study carried out in 2016, the average number of employees with a migration background in the federal administration was estimated at 14.8 per cent. The Government adds that additional employee surveys were conducted within the federal administration in 2019 in order to provide more in-depth data on equality of opportunity and diversity. Based on the results of these surveys, the Government indicates that it will develop new ways for further increasing the participation of people with a migration background and overcoming any obstacles to their access to the labour market.

With reference to education, the Committee welcomes the following initiatives to which the Government refers in its report: (1) the elaboration by the Federal Anti-Discrimination Agency (ADS) in 2018 of Comprehensive Practice Guidelines to combat discrimination against minorities in schools; and (2) the "fair@school" (Schools against Discrimination) competition, a joint initiative launched in collaboration with the ADS, for which the award-winning projects are intended to provide examples of how schools can work for diversity. The Committee however notes the Government's statement that more measures are needed to address discrimination in education.

The Committee notes that, according to a micro-census conducted by the Federal Statistical Office, in 2017: (1) persons with a migration background represented 23.6 per cent of the total population (representing a 3.6 percentage points increase compared to 2015); (2) their employment rate was estimated at 65 per cent, compared to 77.3 per cent of persons of German origin; and (3) 6.6 per cent of them were not in paid employment, compared to 3.0 per cent of persons of German origin. In 2018, the average unemployment rate of persons with a migration background was estimated at 12.9 per cent, compared to 5.2 per cent of persons of German origin. The Committee further notes that, according to the 2019 Annual Report of the ADS, the number of people contacting the agency to report racial discrimination has more than doubled since 2015 and that 33 per cent of cases concerned racial discrimination, accounting for the highest proportion of all cases.

With regard specifically to the situation of the Sinti and Roma people, the Committee notes that the Government has not provided any information. It notes however that, in its 2019 report, the European Commission against Racism and Intolerance (ECRI) expressed concern at the lack of official statistical data on the number of Sinti and Roma and the fact that the latest qualitative study on their situation in the country dates back to 2011 and showed a high level of discrimination and segregation at school and low levels of education. The ECRI also highlighted as a good practice the nomination in a number of Länder of Sinti and Roma mediators to improve interaction and cooperation between Sinti and Roma pupils, their parents and schools (ECRI report on Germany, sixth monitoring cycle, 10 December 2019, paragraphs 95–101).

***In light of the high number of persons with a minority or migration background living in the country and the persistent disparities in their access to education, training, employment and occupation, the Committee urges the Government to: (i) strengthen its efforts to prevent segregation and discrimination, in particular to effectively tackle racial stereotypes and prejudices, in the fields of education, training and employment, including with respect to the Sinti, Roma and people of African descent; (ii) provide information on the proactive measures taken to that end in the context of the NAP-I or otherwise as well as on the results of the measures and programmes already implemented, including the Programme "Strong in the workplace – Mothers with a migration background get on board"; and (iii) provide specific information on the results of the "Diversity in the Economy" Forum and the "Integration in the Labour Market" Forum, including any follow-up measures taken or envisaged in this framework.***

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all.

Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

## Ghana

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1968)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments.

The Committee notes with ***regret*** that, again, the Government's report contains no information regarding a number of its previous comments. The Committee wishes to reiterate that without the necessary information, it is not in a position to assess the effective implementation of the Convention, including the progress achieved since its ratification. ***The Committee hopes that the Government's next report will contain full information on the matters raised below.***

*Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee recalls that since the adoption of the Labour Act in 2003, it has been raising concerns regarding sections 10(b) and 68 of the Act, which are set out in terms that are more restrictive than the principle of the Convention, providing for equal remuneration for "equal work". The Committee notes with ***concern*** that the Government's report merely repeats its previous indication that "equal pay for equal work without distinction of any kind" under sections 10(b) and 68 of the Labour Act is synonymous with the principle of equal remuneration for men and women for work of equal value, but provides no details in support of this assertion and gave no indication that jobs of a completely different nature can be compared under the Act. The Committee emphasizes once more that the concept of "work of equal *value*" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. Due to historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (such as in caring professions) and others by men (such as in construction). Often "female jobs" are undervalued in comparison with work of equal value performed by men when determining wage rates. The concept of "work of equal value" is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraphs 672–679). ***Consequently, the Committee once again urges the Government to take the necessary measures to amend sections 10(b) and 68 of the Labour Act of 2003, in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value set out in the Convention, and to provide information on any progress made in this regard.***

*Equal remuneration for work of equal value in the public service.* The Committee recalls that a public service pay policy setting out a single spine salary structure was previously adopted and that all public service employees were to be brought under this structure by the end of 2012. The Committee also recalls that the evaluation had been made on the basis of four main job factors (knowledge and skill, responsibility, working conditions and effort) which had been subdivided into 13 subfactors. The Committee notes the documentation provided by the Government in its report, including a table entitled "Single spine salary structure", a memorandum of understanding between the Fair Wages and Salaries Commission and the social partners, and a White Paper on the single spine pay policy. It notes however that the table "Single spine salary structure" provided does not contain information on the types of jobs that fall within each level of pay and thus does not allow the Committee to assess whether the method of evaluation of jobs used is effectively free from gender bias. ***The Committee therefore requests the Government to provide information on how it has classified jobs within the single spine salary structure, in order to allow it to assess the factors used to compare jobs and ensure that they are free from gender bias. Noting the absence of information provided in this regard, the Committee requests once more the Government to provide information on the progress made in covering all public service employees by the single spine salary structure, and how this has impacted on the relative pay of women and men in the public service. It also reiterates its request for specific information on the number of men and women at each level of the pay structure. Finally, the Committee reiterates its request to the Government to provide information on the practical application of this single spine salary structure, including on the issues dealt with by the Fair Wages and Salaries Commission and the steps taken by this Commission to ensure full application of the principle of the Convention in the public service.***

*Article 2(2)(c). Collective agreements.* For a number of years, the Committee has been commenting on collective agreements that contained provisions discriminating against women, in particular concerning the allocation of certain fringe benefits. The Committee notes that, once more, the Government's report does not contain any specific information in response to the Committee's requests in this regard. ***Therefore, once again, the Committee urges the Government to take the necessary steps, in cooperation with employers' and workers' organizations, to ensure that provisions of collective agreements do not discriminate on the ground of sex. The Committee requests the Government to provide information on any measures taken or envisaged, in cooperation with employers' and workers' organizations, to promote the principle of equal remuneration between men and women for work of equal value, including objective job evaluation methods, through***

***collective agreements. It also requests the Government to provide examples of collective agreements reflecting the principle enshrined in the Convention.***

*Article 3. Objective job evaluation in the private sector.* In its previous comments, the Committee requested the Government to take steps to promote objective job evaluation methods in the private sector to eliminate unequal pay between men and women. The Committee notes that the Government's report is silent on this point. However, its notes from the sixth round of the Ghana Living Standards Survey, published in 2014, that the hourly earnings of men in the various occupational groups remain higher than those of women except for clerical support workers. The Committee recalls that the concept of "equal value" requires some method of measuring and comparing the relative value of different jobs. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, *Article 3* presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions (see 2012 General Survey, paragraphs 695–703). ***Consequently, the Committee once again requests the Government to take steps to promote objective job evaluation methods in the private sector to eliminate unequal pay, and to provide information on the progress made in this regard. Once more, it requests the Government to provide updated information on the gender pay gap in the private sector, including statistical information based on the results of the recent Ghana Living Standards Survey.***

*Article 4. Tripartite cooperation.* Noting the lack of new information provided in this regard, the Committee once again recalls the important role of the employers' and workers' organizations in promoting the principle of the Convention. ***The Committee therefore requests the Government to provide specific information on the concrete steps and action undertaken to promote the principle of the Convention, and the results of such initiatives. The Committee also requests the Government to indicate whether equal remuneration between men and women has been discussed specifically within the National Tripartite Committee, and how the principle has been taken into consideration in the establishment of the minimum wage.***

*Enforcement.* In its previous comments, the Committee noted that the National Labour Commission and the Fair Wages and Salaries Commission deal with issues pertaining to grievances of workers, particularly those regarding equal remuneration and that an Alternative Dispute Resolution Centre, pursuant to the Alternative Dispute Resolution Act of 2010, serves as an additional forum to deal with complaints regarding remuneration. The Committee notes the Government's repeated indication that there have been no cases brought forward on the issue of equal remuneration between men and women workers for work of equal value. In this regard, the Committee recalls that, where no cases or complaints, or very few, are being lodged, this is likely to indicate a lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals (see 2012 General Survey, paragraph 870). ***Therefore, the Committee requests the Government to take steps to raise awareness of the relevant legislation, to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of discrimination and unequal pay, and also to examine whether the applicable substantive and procedural provisions, in practice, allow claims to be brought successfully. In addition, the Government is asked to provide information on any decisions by the courts, the National Labour Commission, the Fair Wages and Salaries Commission and the Alternative Dispute Resolution Centre or any other competent body, as well as on any violations identified by, or reported to, labour inspectors, relating to equal remuneration for men and women for work of equal value.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

*Article 1 of the Convention. Prohibited grounds of discrimination.* In its previous observation, the Committee urged the Government to take concrete steps to amend the Labour Act of 2003 so as to include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention, and to provide information on any progress made in this regard. The Committee notes that, in its report, the Government indicates firstly, that: the 1992 Constitution prohibits discrimination in article 17(2) and (3), which provides that: "A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status", and that, for the purpose of this article, "'discriminate' means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion, or creed". The Government adds that the Labour Act 2003 prohibits discrimination throughout the employment cycle (recruitment, career development and termination). The Committee stresses once again that the expressions "social status", "politics" and "political status" set out as prohibited grounds of discrimination in sections 14 and 63 of the Labour Act appear to be narrower than the terms "social origin" and "political opinion" enumerated in the Convention. It recalls that the prohibition of discrimination on the basis of "political opinion", as set out in the Convention, should cover a worker's activities to express or demonstrate political views and that this protection is not exclusively limited to an individual's activities or position within a political party. Further, discrimination on the basis of "social origin" arises when an individual's membership of a class, a socio-occupational category or a caste determines his or her occupational future either by denying him or her access to certain jobs or activities or, conversely, by assigning him or her to certain jobs. Finally, it wishes to reiterate that, where legal provisions are adopted to give effect to the principle of the Convention, they should include all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention (2012 General Survey on the fundamental Conventions, paragraphs 802, 805 and 853). ***Noting that the Government mentions ongoing consultations to review the Labour Act 2003, the***

***Committee asks the Government to seize this opportunity to ensure that the new Labour Act includes as a minimum the seven prohibited grounds of discrimination listed in Article 1(1)(a) of the Convention. The Committee asks the Government to provide information on any developments in this regard.***

*Article 1(1)(a). Discrimination based on sex. Sexual harassment.* In its previous comment, the Committee urged the Government to: (1) expand the definition of sexual harassment to explicitly cover hostile environment sexual harassment; and (2) take concrete steps to achieve better knowledge and understanding of the existence of sexual harassment and the means of preventing and addressing it among labour inspectors, judges and other relevant public officials, as well as employers, workers and their organizations, and to provide information on the progress achieved. The Government indicates that: (1) the definition of sexual harassment will be expanded during the on-going review of the Labour Act; (2) it is committed to combating sexual harassment through labour inspection and the enforcement of the law by public institutions and competent courts; and (3) that more sensitization programmes, such as seminars, training, advocacy and other stakeholder consultations will be embarked upon to create awareness of sexual harassment at work as a serious manifestation of sex discrimination to be addressed within the context of the Convention. ***The Committee asks the Government to provide information: (i) on any developments concerning the expansion of the definition of sexual harassment in the Labour Act; and, in the meantime, (ii) on the number, nature and outcome of any complaints or cases of violence or sexual harassment at work handled by the labour inspectorate and the courts.***

*Article 2. Equality of opportunity and treatment irrespective of race, colour, religion or national extraction.* The Committee notes with ***regret*** that the Government's report is once again silent on the issue of discrimination on the grounds of race, colour, religion and national extraction. It recalls that, while the relative importance of the problems relating to each of the grounds may differ for each country, when reviewing the situation and deciding on the measures to be taken, it is essential that attention be given to all the grounds in implementing the national policy (2012 General Survey on the fundamental Conventions, paragraphs 848 and 849).

*General observation of 2018.* Regarding the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, and remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

*Article 5. Special measures. Persons with disabilities.* In its previous comment, the Committee once again requested the Government to provide the data on persons with disabilities collected by the National Council on Persons with Disability (NCPD) established by the Persons with Disability Act, 2006, and on the implementation of the special incentive scheme for employing persons with disabilities. The Committee notes that, according to the statistical information provided by the Government (Ghana Statistical Service Survey): in 2010, persons with disabilities represented 3 per cent (737,743 persons) of Ghana's population (24,658,823). In general, there were more women with disabilities than men, and they mostly lived in rural rather than urban localities. It also notes that over half of all the persons with disabilities aged 15 and over were employed, and among those employed the percentage was higher for men (52 per cent) than women (47 per cent), and higher in the rural areas (58 per cent) than urban localities (49 per cent). The Committee recalls that the Persons with Disability Act, 2006, provides: (1) for rights such as unrestricted access to public places and buildings, employment, education and transport and a 10-year moratorium, within which all public buildings have to be made accessible to people with disabilities; and (2) that the State shall set up rehabilitation centres in each of the 10 administrative regions in the country to train persons with disabilities and facilitate their employment. ***The Committee therefore asks the Government to provide information on: (i) the implementation of the Persons with Disability Act, 2006, and particularly on the obstacles encountered in practice in providing job training and employment opportunities for persons with disabilities; (ii) the functioning and activities of the NCPD in the field of employment and occupation;***

***and (iii) updated statistical information on the employment rate of persons with disabilities, disaggregated by sex, sector and age.***

*Enforcement.* In its previous comment, the Committee requested the Government to: (1) take steps to enhance the capacity of law enforcement officials to identify and address discrimination in employment and occupation; (2) provide information on any decisions of the courts, the National Labour Commission, the Commission on Human Rights and Administrative Justice, or any other competent body, as well as on any violations identified by, or reported to, labour inspectors and the manner in which such cases were addressed; and (3) take concrete steps to revise the labour inspection form to include a specific reference to discrimination on all the grounds listed in the Convention, including sexual harassment. The Committee notes the Government's commitment to continue enhancing the capacity of law enforcement agencies and institutions to identify and address discrimination in employment. The Government adds that there have been no decisions of the courts, the National Labour Commission, the Commission on Human Rights and Administrative Justice or any other competent body relating to discrimination in employment, nor cases referred to labour inspectors. Moreover, the Committee notes that the labour inspection form is being reviewed and that it will address all the grounds of discrimination listed in the Convention, including sexual harassment. ***The Committee asks the Government to provide: (i) concrete examples of measures taken to enhance the capacity of law enforcement agencies and institutions to identify and address discrimination in employment and occupation; (ii) a copy of the new labour inspection form when it has been adopted; (iii) copies of any decisions by the courts, the National Labour Commission, the Commission on Human Rights and Administrative Justice or any other competent body, and information on any cases of discrimination in employment and occupation identified by, or reported to, labour inspectors, and the manner in which such cases were addressed.***

## Greece

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the observations received from the Hellenic Federation of Enterprises (SEV) and the International Organization for Employers received on 1 October 2020, as well as on the basis of the information at its disposal in 2019. The Committee notes the observations of the Greek General Confederation of Labour (GSEE) received on 31 August 2017 and 30 August 2019.

*Legislative developments.* The Committee refers to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) regarding the application of Law No. 4604/2019 on Substantive Gender Equality Preventing and Combating Gender-Based Violence of 12 June 2019 which encourages public and private enterprises to draft and implement "Equality Plans" with specific strategies and targets to prevent all forms of discrimination against women and provides that the General Secretariat for Family Policy and Gender Equality (GSFPGE) can award "Equality Labels" to them as a reward for their engagement in favour of equal treatment, including equal pay for equal work, and balanced participation of women and men in managerial positions or in professional and scientific groups set up in the enterprise (section 21).

*Article 2 of the Convention. Gender pay gap.* Referring to its previous comments on the gender pay gap and the occupational gender segregation of the labour market, the Committee notes, from the statistical information forwarded by the Government, that while the gender pay gap decreased from 15 per cent in 2010 to 12.5 per cent in 2014, the average monthly salary of women remained substantially lower than that of men in almost all economic sectors, even when men and women workers are employed in the same occupational category. It observes that, in 2018, the Hellenic Statistical Authority (ELSTAT) carried out a Labour Force Survey (LFS), but ***regrets*** that no updated information on the gender pay gap has been included in this survey nor has such information been published since 2014. The Committee notes that the GSEE highlights that the gender pay gap may be higher if data was properly collected, which demonstrates that there is an urgent need to establish an independent mechanism that will monitor this phenomenon, record and process targeted data already stored in existing information systems for employment and social security purposes. The Committee notes, from the 2018 LFS, that the employment rates for women slightly increased from 46.8 per cent in 2016 to 49.1 per cent in 2018, but remained 21 percentage points below that of men (70.1 per cent in 2018), being still one of the lowest employment rates for women among the European Union (EU average of 66.5 per cent), as highlighted by the GSEE. It further notes that women are still mostly concentrated in low-paid jobs, representing 61.2 per cent of clerical support workers but only 26.8 per cent of senior officials and managers and 9.1 per cent of board members of the largest publicly listed companies in the EU (Labour Force Survey of ELSTAT and European Commission, 2019 Report on equality between men and women in the EU, page 27). In this regard, the Government refers in its supplementary information to Law No. 4706/2020 on Corporate Governance,

Capital Market Modernization, which is a transposition into the Greek legislation of Directive 2017/828 of the European Parliament and European Council, and measures for the implementation of Regulation (EU) 2017/1131 and other provisions, adopted on 17 July 2020, which provide that the eligibility criteria for the appointment of members of Boards of Directors shall include at least the adequate representation by gender indicated as not less than 25 per cent of the total number of members. The Committee also notes that, as highlighted by the European Commission and Eurostat, the gender gap in unpaid working time is one of the highest in the EU which is reflected in the labour market by the fact that more than twice as many women as men are in part-time employment (13.2 per cent and 6 per cent, respectively in 2018). It welcomes the Government's indication of the establishment of the SHARE Project (3.2.2020-2.2.2022), which aims to challenge traditional stereotypes and roles within the family and promote work and life balance, focusing on companies' workplaces and their involvement in the promotion of gender equality and work-life balance. The Committee takes note of the adoption of the National Action Plan for Gender Equality (NAPGE) for 2016–20 and more particularly of the Government's acknowledgement that: (1) the gender pay gap and pension gap persist, and that this matter will be a priority in the new National Action Plan for Gender Equality 2021-2025, which is being elaborated; (2) employed women have low-paid and precarious jobs, with little room for promotion and are unable to develop professionally and educationally; and (3) women still undertake the bulk of domestic work and spend periods away from the labour market more frequently than men, which also impact their future earnings and pensions. It notes that, as a result, the NAPGE sets specific actions to examine the transferability of good practices to tackle the gender pay gap, such as an annual report on the gender pay structure, and the design of a "salary and wage calculator" which provides up-to-date and easily accessible information on the usual wages in different industries and regions. The Committee also notes SEV's observation that with a view to changing the culture of stereotypes and gender segregation to tackle the gender pay gap, measures need to address gender stereotypes including through pre-school education and special educational programs on career orientation, as well as promoting young women's access to science, technology, engineering and mathematics (STEM). While welcoming the adoption of the NAPGE, the Committee notes that, in April 2019, the United Nations (UN) Working Group on Discrimination Against Women in Law and in Practice highlighted the need for women's equal access to the labour market and improved pay and conditions at work, and expressed specific concern at the persistence of the gender pay gap and the absence of women in leadership roles (OHCHR, Press statement of 12 April 2019). ***In light of the persistent gender pay gap and occupational gender segregation of the labour market, the Committee asks the Government to provide information on: (i) the application of Law No. 4706/2020 and its impact on the presence of women on Boards of Directors; and (ii) any other measures taken, including in collaboration with employers' and workers' organizations, to raise awareness, make assessments, and promote and enforce the application of the Convention. It asks the Government to provide information on the proactive measures implemented, including in the framework of the National Action Plan for Gender Equality for 2016–20 and for 2021-2025, to address the gender pay gap by identifying and addressing its underlying causes, such as vertical and horizontal occupational gender segregation and stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family, and by promoting women's access to a wider range of jobs with career prospects and higher pay. Recalling that regularly collecting, analysing and disseminating information is important for addressing appropriately unequal pay, determining if measures taken are having a positive impact on the actual situation and the underlying causes of the gender pay gap, the Committee requests the Government to take all necessary measures to provide updated statistical information on the gender pay gaps, both in the public and private sectors.***

The Committee is raising other matters in a request addressed directly to the Government which reiterates the content of its previous request adopted in 2019.

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1984)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the observations received from the Hellenic Federation of Enterprises (SEV) and the International Organization of Employers (IOE) received on 1 October 2020, as well as on the basis of the information at its disposal in 2019. The Committee notes the observations of the Greek General Confederation of Labour (GSEE) received on 31 August 2017 and 30 August 2019.

*Articles 1, 2 and 3 of the Convention. Legislative developments.* In its last observation, the Committee noted with interest the adoption of Law No. 4604/2019 on Substantive Gender Equality, Preventing and Combating Gender-Based Violence of 12 June 2019, which encourages public and private enterprises to draft and implement equality plans and provides that the General Secretariat for Family Policy and Gender Equality (GSFPGE) can award equality labels to public and private enterprises as a reward for achievements in the promotion of equality. It asked the Government to provide information on the application of this

Law in practice, and particularly on sections 6, 7, 9, 17 and 21. In its supplementary information, the Government indicates that, in application of sections 6, 7 and 9 of Law No. 4604/2019 and its implementing circular: (1) two regional committees and 98 municipal committees for gender equality have been established to promote women's rights at the local level; and (2) the appointment process of members of the National Council for Gender Equality (ESIF) has started. The Government adds that the adoption of equality plans by ministries is not yet compulsory, but that a programme is in place to ensure that the necessary expertise can be gradually acquired. The Committee notes the scope of the Act, which applies to persons who are employed or applicants for employment in both the public and private sectors, irrespective of the form of employment and nature of the services provided, as well as freelance professional persons and persons in vocational training or candidates for vocational training (section 17). ***The Committee asks the Government to continue providing information on the steps taken for the application in practice of Law No. 4604/2019, and particularly on: (i) the establishment, functioning, activities and impact of municipal and regional committees for gender equality and the National Council for Gender Equality; and (ii) the elaboration and implementation of equality plans by employers in both the public and private sectors, and the number of equality labels awarded by sector.***

The Committee also noted with interest the adoption of Equal Treatment Law No. 4443/2016, transposing Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of race or ethnic origin, and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, which replaces Law No. 3304/2005 and expands the list of prohibited grounds of discrimination with the addition of the following new grounds: chronic illness, ascendance, family or social status, and gender identity or characteristics (sections 2(2) and 3). However, the Committee also noted that section 4(1) of Law No. 4443/2016 provides that "a difference of treatment which is based on a characteristic related to any of the grounds of discrimination shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes an essential and decisive occupational requirement, provided that the objective is legitimate and the requirement is proportionate". Consequently, the Committee asked the Government to provide: (1) information on the application of section 4(1) in practice, with examples of cases in which the provision has been used; and (2) copies of any relevant court decisions, and particularly any interpretation made of the terms "essential and decisive occupational requirement", "legitimate objective" and "proportionate requirement". In its supplementary information, the Government clarifies that a difference in treatment is justified through three criteria: (1) the reasons why the established characteristic constitutes an essential qualification; (2) the purpose of the specific characteristic; and (3) adequacy to the principle of proportionality. The Government also refers to two Ombudsman cases, according to which an age limit of 32 years for an expert vacancy post in the Ministry of Foreign Affairs was considered discriminatory (Case No. 20180328-2018) and the absence of an exception for persons with disabilities regarding physical tests for staff vacancies in detention facilities was considered justified (Case No. 267553-2019). The Committee takes note of this information.

*Article 1(1)(b) of the Convention. Additional grounds. Disability.* Recalling that the national legislation prohibits discrimination on the ground of disability in employment and occupation, the Committee notes that Law No. 4488/2017 of 13 September 2017 on improving the protection of employees and on the rights of persons with disabilities provides that any natural person or public organization in the wider public or private sector, is required to facilitate the equal exercise of the rights of persons with disabilities in their respective fields of competence or activity by taking all appropriate measures and refraining from any action which may discriminate against persons with disabilities. The Committee notes, from the statistical information provided by the Government, in its report and supplementary information, that twelve cases of discrimination on the ground of disability or chronic disease were reported between 2018 and 2019 by the labour inspectorate and that the Ombudsperson's 2018 report further indicates that 14 per cent of cases received concerned discrimination on grounds of disability or chronic disease. The GSEE indicates that specific steps should be taken to raise awareness of the fact that the treatment of an employee with a disability may conceal discrimination. The Committee notes that in its 2019 concluding observations, the United Nations Committee on the Rights of Persons with Disabilities expressed concern at the high level of unemployment among persons with disabilities and the insufficient efforts to ensure their inclusion in the open labour market, particularly with regard to women with disabilities (CRPD/C/GRC/CO/1, 29 October 2019, paragraph 38(a)). ***The Committee asks the Government: (i) to adopt proactive measures in order to promote equal opportunity and treatment for persons with disabilities in education, vocational training and employment, including by enhancing their access to a wider range of jobs in the open labour market; and (ii) to provide statistical information on the employment rate of persons with disabilities, disaggregated by sex, age and work environment (segregated work environment or the open labour market).***

*Age.* In its supplementary information, the Government reports the abolition of the age limit for the postgraduate education of civil servants by Law No. 4590/2019 and the abolition of the age limit for specialists in the National Health System by Law No. 4528/2018. The Committee also recalls that the national legislation prohibits direct and indirect discrimination in employment and occupation on the

ground of age (section 2(2)(a) of Law No. 4443/2016). Referring to its 2019 direct request on the application of the Equal Remuneration Convention, 1951 (No. 100), the Committee welcomes the removal, as of February 2019, of the lower minimum wage rate, which has been set since 2012 for young workers under the age of 25. In its supplementary information, the Government explains that most cases of age discrimination concern a maximum age criterion for access to work and employment, and refers to the Ombudsman's 2019 Report, which indicates that in most cases age is associated, often stereotypically, with physical characteristics and special physical abilities that only younger people have without even indicating that such skills are necessary for the performance of the posts in question. The Government further adds that in 2019 the labour inspectorate investigated two cases of discrimination based on age, and refers to Cases Nos 20180328-2018 and 259702-2019, in which the Ombudsperson called for the reconsideration of job vacancies limited to candidates of a maximum of 32 or between 20 and 35 years of age, respectively. The Committee notes with ***concern*** that, in its 2018 special report on equal treatment, the Office of the Ombudsperson indicates that discrimination on the ground of age is constantly the subject of investigations by the Office and refers to several cases of maximum and/or minimum age limits unjustifiably imposed in the case of job vacancies, both in the public and private sectors. The Committee notes, however, that the European Commission recently observed that, while the national legislation allows for exceptions based on age for specific reasons, there is relevant case law, particularly on the introduction of age limits, that has found that such exceptions constitute discrimination based on age (European Commission, European Network of Legal Experts in Gender Equality and Non-discrimination, Country Report, Greece, 2018, page 49). The Committee recalls that age is considered a physical condition in respect of which social measures of protection and assistance may be necessary, as provided for in *Article 5(2)* of the Convention (2012 General Survey on the fundamental Conventions, paragraph 813). ***Noting that job vacancies frequently impose restrictions based on age, the Committee asks the Government to: (i) take steps to prevent and address cases of direct or indirect discrimination based on age in employment and occupation, including through the development of public information campaigns and awareness-raising activities for workers, employers and their respective organizations; (ii) provide information on the steps taken and the measures adopted to tackle discrimination on the ground of age, as well as on the number and nature of cases concerning discrimination on this ground in employment and occupation that have been dealt with by the labour inspectorate, the Office of the Ombudsperson and the courts, as well as the sanctions imposed and remedies granted; and (iii) provide detailed information on the specific cases in which it was considered that age limits set in job vacancies were covered by the exceptions provided for in the national legislation.***

*Articles 2 and 3. Equality of opportunity and treatment for men and women.* Referring to its previous comments on occupational gender segregation, the Committee notes from the Labour Force Survey (LFS) of the Hellenic Statistical Authority (ELSTAT) that in 2019, the employment rate for women slightly increased from 46.8 per cent in 2016 to 51.3 per cent, but remained 20 percentage points below that of men (71.3 per cent in 2019). The Committee notes that the GSEE's indication that the 2018 employment rate of women of 49.1 per cent is one of the lowest in the European Union. It notes that in 2019 the unemployment rate of women was still substantially higher than that of men (21.5 per cent and 14 per cent, respectively). The Committee further notes that, according to ELSTAT 2018 data, women are still mainly concentrated in traditionally female-dominated sectors, such as education (74.4 per cent women) and health and social services (71.6 per cent women), as well as in low-paid jobs, representing 61.2 per cent of clerical support workers, but in 2018 only 26.8 per cent of senior officials and managers and 9.8 per cent of board members of the largest publicly listed companies (ELSTAT Labour Force Survey and European Commission, 2019 Report on equality between men and women in the EU, paragraph 27). The Committee also notes the indication by the SEV that gender stereotypes have a strong influence on the existing division of labour between men and women, both in the family, the workplace and society, and that these factors can limit women's career prospects and contribute to inequalities in society. It further notes that, as highlighted by the European Commission and Eurostat, the gender gap in unpaid working time (the fact that women do most household chores, care of family members and other unpaid work, which means they have less time to devote to paid employment) is one of the highest in the European Union, which is reflected in the labour market by the fact that more than twice as many women as men are in part-time employment (13.2 per cent and 6 per cent, respectively, in 2018). The Committee takes note of the adoption of the National Action Plan for Gender Equality (NAPGE) 2016–20. In particular, it notes the indication in the NAPGE that: (1) women are still under-represented in specific sectors of the economy; (2) employed women have low-paid and precarious jobs, with little room for promotion and are unable to develop professionally and educationally; and (3) women still undertake the bulk of domestic work and spend periods away from the labour market more frequently than men. It notes that, as a result, the NAPGE includes specific actions aimed at, inter alia: (1) the enhancement of women's employment and in particular women's entrepreneurship; (2) the promotion of gender equality in education and vocational training; (3) ensuring the participation of women in decision-making; and (4) the reconciliation of work and family responsibilities. The Committee also notes the Government's indication, in its supplementary information, that occupational gender segregation will be one of the priorities of the labour component

of the new NAPGE 2021–25. The Committee further notes that the United Nations Working Group on Discrimination Against Women in Law and in Practice highlights the need for equal access for women to the labour market and improved conditions at work, and expresses specific concern at the absence of women in leadership roles (A/HRC/44/51/Add.1, 16 April 2020, paragraph 90(c) and (i)). The Committee further notes that, in its 2018 report, the Office of the Ombudsperson indicated that the number of complaints on gender-based discrimination increased, especially at the workplace, representing 57 per cent of the total number of the complaints received in 2018, and referred to several cases of discriminatory job vacancies seeking only men or women. ***In light of the persistent occupational gender segregation, the Committee asks the Government to take steps, including in collaboration with employers' and workers' organizations, to raise awareness, make assessments and promote and enforce the rights guaranteed by the Convention. It asks the Government to include proactive measures in the NAPGE 2021–25, and to provide information on the impact of measures taken under the NAPGE 2016–20 to improve equality of opportunity and treatment for men and women in employment and occupation by effectively enhancing women's economic empowerment and access to the labour market, including to decision-making positions.***

*Equality of opportunity and treatment irrespective of race, colour or national extraction. Roma people.* Referring to its previous comments on the measures envisaged in the framework of the Action Plan for the implementation of the National Strategy for the Social Integration of Roma 2012–2020, the Committee notes the Government's indication that 12 strategies were implemented at the regional level for the social integration of the Roma. The Government adds that, between 2013 and 2015, 883 Roma people benefited from local employment projects and 2,232 benefited from the services of the 27 support centres for the Roma and vulnerable groups. The Committee notes the adoption in May 2016 of a project to develop the National Centre for Social Solidarity as a national platform for consultation and dialogue for the formulation and implementation of policies for the integration of the Roma. However, the Committee notes that the United Nations Working Group on Discrimination against Women in Law and Practice and the Human Rights Council in the framework of the Universal Periodic Review, several United Nations bodies have expressed concern at the persistent stereotypes and discrimination affecting the Roma in access to employment and education, despite the efforts made by the Government, and have explicitly recommended the Government to fully implement the National Strategy for the Integration of the Roma 2012–20 (A/HRC/44/51/Add.1, 16 April 2020, paragraph 90(j) and (k), A/HRC/33/7, 8 July 2016, paragraph 135, and A/HRC/WG.6/25/GRC/2, 7 March 2016, paragraphs 16 and 76). ***The Committee asks the Government to strengthen its efforts to ensure that acts of discrimination against the Roma in employment and occupation is effectively prevented and addressed and to provide information on the impact of the plans and programmes implemented to enhance the equal access of the Roma to education, training and employment, including within the framework of the Strategy for the Integration of the Roma up to 2020. It asks the Government to provide information on the activities undertaken to that end in collaboration with the National Centre for Social Solidarity, as well as statistical data disaggregated by sex, on the labour market situation of the Roma.***

*Migrant workers.* Taking into consideration the high number of migrants and refugees received by the country since 2015, the Committee notes that according to ELSTAT, for the first quarter of 2019, the unemployment rate of migrant workers was almost twice as high as that of national workers (32.3 per cent and 18.3 per cent, respectively). In its supplementary information, the Government recalls that Law No. 4251/2014 provides for a series of sanctions for employers employing third country nationals without a legal document giving them access to work. The Government adds that the labour inspection services deal with anonymous and whistle-blowing complaints regarding the employment of illegally resident third country nationals, that they use a risk analysis system to perform targeted audits and that they also take precautionary action through the provision of information. It further indicates that in 2019, the labour inspectorate identified 41 cases of the employment of illegally resident foreign nationals. In relation to the agricultural sector, the Committee further notes the Government's indication in its supplementary information that: (1) the agricultural sector has a high rate of migrant workers, including irregular immigrant workers; (2) pursuant to Law No. 4554/2018 and Law No. 4052/2012, inspections in enterprises are carried out and sanctions (including high administrative sanctions) are imposed where undeclared work and the illegal employment of illegally resident third country nationals is detected; (3) 33 inspections were undertaken at agricultural product packaging companies and strawberry cultivation greenhouses; and (4) regarding the case involving a complaint of 164 foreign agricultural workers, the Prosecutor of the Court of First Instance issued a document describing them as being employed under particularly abusive working conditions and that they were therefore entitled to obtain a residence permit for humanitarian reasons. While taking note of this information, the Committee notes with ***deep concern*** that in its 2018 annual report published in April 2019, the Racist Violence Recording Network (RVRN, a network of non-governmental organizations established at the initiative of the Greek National Commission for Human Rights and the United Nations High Commissioner for Refugees) refers to acts by employers against migrants and refugees, with victims suffering extreme labour exploitation and physical violence when they ask for their pay. The Committee further observes that, in its 2018 report, the Office of the

Ombudsperson highlights the unsatisfactory results of its numerous interventions since 2008 in relation to the inadequate inspection of the working conditions of migrant agricultural workers. The Committee also notes that several United Nations treaty bodies have expressed concern at reported cases of migrants working in slavery-like conditions in the agricultural sector and that the Human Rights Council has recommended, in the context of the Universal Periodic Review (UPR), that the Government supervise the working conditions of migrant workers effectively (A/HRC/33/7, paragraph 135, and A/HRC/WG.6/25/GRC/2, paragraph 35). The Committee notes in this regard the indication by the GSEE in March 2017 that the European Court of Human Rights (ECtHR) handed down a decision in which it considered that Bangladeshi workers were victims of trafficking for the purposes of labour exploitation in the agricultural sector (ECtHR Application No. 21884/15, Chowdury and others v. Greece, 30 March 2017). The Committee notes that the Office of the Ombudsperson also refers to several cases of discrimination on the ground of national origin as a result of job vacancies expressly requesting Greek citizens or, in other cases, non-citizens. The Committee recalls that all migrant workers, including those in an irregular situation, must be protected against discrimination in employment on the basis of the grounds set out in *Article 1(1)(a)* of the Convention (2012 General Survey, paragraph 778). ***The Committee urges the Government to take all the necessary measures without delay to address effectively any cases of discrimination against men and women migrant workers in terms and conditions of employment, particularly with regard to labour exploitation in the agricultural sector. It asks the Government to provide information on the concrete steps taken or envisaged to foster equality of opportunity and treatment in employment and occupation, irrespective of race, colour or national extraction, as well as on their impact. The Committee asks the Government to continue providing information on the number and nature of any complaints or cases of discrimination against migrant workers dealt with by the labour inspectorate, the Office of the Ombudsperson or the courts, the sanctions imposed and remedies granted, as well as statistical data, disaggregated by sex and national extraction, on the participation of migrant workers in the labour market.***

*General observation of 2018.* Regarding the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

## Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1988)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019. The Committee notes the observations of the Greek General Confederation of Labour (GSEE) received on 31 August 2017 and 30 October 2019.

*Measures addressing family responsibilities during the COVID-19 pandemic*. The Committee notes that the Government refers to the adoption of the Emergency Law of 13 March 2020 (O.G.A'/55) and Emergency Law of 20 March 2020, which provide for two alternative measures for workers from the public sector, irrespective of sex, whose children attended kindergartens, nurseries and schools up to the third grade of Junior High Schools that had suspended operations, or whose children were aged up to four years old and did not attend kindergartens and nurseries: 1) a "special purpose leave" conceived in successive 4-days cycles (three of them being registered as paid leave days, and one of them being registered as annual leave); and 2) a reduction of up to 25 per cent of working hours on a daily basis without reduction in wages,

with the requirement to compensate them with work beyond normal working hours once school units reopen. The Government adds that provision was made to exclude workers from the scope of the above-mentioned measures taking into account the full and effective functioning of specific services within the framework of addressing the pandemic (including employees who serve at the Ministry of Health, health service provider bodies, the Ministry of Immigration and Asylum and the personnel of all uniformed services). The Government also indicates that Emergency Law of 13 April 2020 (O.G.A'/84) provided for similar leave arrangements for workers in the private sector, in which case the 4-days cycle 'special purpose leave' would be recorded as leave granted by the employer (2 days), leave subsidized by the State (1 day) and annual leave (1 day). The Committee observes the Government's indication that 'special purpose leave' applies to both parents as an alternative or complementary option if they are both employed in the public or private sector, but that they cannot take it simultaneously, and that it is also granted to a working parent where the other parent is not employed but is in hospital suffering from any disease or coronavirus, or is a person with disabilities. While such measures were adopted for the closure period of school units and childcare facilities, the Government explains that they continued to apply after their reopening and until the end of the 2019-20 school year in case children-pupils or immediate family members were among the group of people at high risk of illness from COVID-19 or were already suffering from it. The Government also refers to Law 4722/2020 which provides for the use of the special leave for children's sickness for 14 days or more by working parents in case their children are affected by the virus. ***The Committee asks the Government to provide information on the application and results of the specific leave measures adopted in the context of the Covid-19 pandemic.***

*Legislative developments.* The Committee refers to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) regarding the application of Law No. 4604/2019 on Substantive Gender Equality Preventing and Combating Gender-Based Violence of 12 June 2019. The Committee also notes with ***interest*** the Government indication in its report and supplementary information that Law 4590/2019 increases the number of days of leave of civil servants due to sickness of their children and provides parental leave for both parents in the event of the adoption of children; while Law 4674/2020 introduces new provisions on family-related leave in the public sector, such as, for example: (1) for the upbringing of an adopted or foster child or a child born through a surrogacy arrangement, for child sickness and children school monitoring; (2) for workers who have a spouse or children (including the guardianship of a child) who suffers from certain diseases or with disabilities; and (3) for civil servants who need mobility arrangements (due to health reasons from the worker, a spouse or partner, or a first degree relative, or to join the civil servant spouse who works in a different region or country). The Government adds that, according to Law 4674/2020, certain types of leave were also granted to public sector employees bound by a fixed-term contract under private law. ***The Committee asks the Government to provide information on the application, scope and impact of leave and mobility measures provided for in Law No. 4590/2019 and Law No.4674/2020.***

*Article 3 of the Convention. National policy. Protection from discrimination on the ground of family responsibilities*. Referring to its previous comments where it noted that working mothers returning from maternity leave have been offered part-time and rotation work, the Committee notes the Government's reference to the prohibition of discrimination on the grounds of gender or family status through Law 3895/2010 and Law 3896/2010. The Committee also takes note of the National Action Plan on Gender Equality (NAPGE) for 2016–2020, which sets as a priority the reconciliation of work and family life as well as a number of targeted actions concerning, *inter alia*, protection against discrimination on the grounds of pregnancy and maternity and the monitoring of complaints concerning discrimination on the ground of family responsibilities against men and women, as well as that the Labour Inspectorate, in cooperation with the Ombudsperson, is the relevant body to monitor and implement access of workers with family responsibilities to employment, and to address complaints on violations of worker's rights. The Committee nevertheless notes that according to statistical information provided by the Government in its report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), since 2014 the number of women workers whose working arrangements have been converted to part-time and rotation employment, with or without their consent, has increased, and that, in its 2018 special report on equal treatment, the Ombudsperson highlighted the substantial number of reports relating to detrimental changes in working conditions imposed on women returning from maternity leave. In April 2019, the United Nations (UN) Working Group on Discrimination Against Women in Law and Practice expressed concern about ongoing discrimination based on pregnancy and family responsibilities, indicating that while women who return to work following maternity leave are legally entitled to return to the same job or an equivalent one, in practice, a serious deficiency is observed in the application of the law relating to these matters, particularly in relation to women in high-ranking positions (OHCHR, Press statement of 12 April 2019). ***The Committee asks the Government to provide information on the measures adopted, in the framework of Law 3896/2010 and the National Action Plan on Gender Equality or otherwise, to facilitate the reconciliation between work and family life both for men and women workers with family responsibilities, including by ensuring that workers with family responsibilities receive adequate protection against discrimination in practice. The Committee asks the Government to provide***

***information on any measures taken to ensure the effective implementation of the relevant legislative provisions, including awareness-raising activities for employers, as well as their impact. It also asks the Government to provide information on any cases of discrimination in employment and occupation based on family responsibilities dealt with by the labour inspectors, the Ombudsperson, or the courts, as well as on the sanctions imposed and remedies provided.***

*Article 5. Childcare and family services and facilities.* The Committee previously noted that, as a result of the action "Reconciliation of work and family life" (implemented in the framework of the Operational Programme "Human Resources Development" 2007/2013), women workers received a voucher providing care services for babies, children and persons with disabilities, and requested the Government to consider providing such vouchers to men and women workers with family responsibilities on an equal footing. The Committee notes the Government's indication that such measures benefited almost 210,000 persons and that, as a result, the action will be continued for the period 2014–20, targeting women with low income. The Government adds that the beneficiaries of such action are mothers, as well as men or women who are granted the custody of children by court ruling. The Committee notes that, in its supplementary information, the Government indicates that, according to Joint Ministerial Decision (JMD) 71383 (O.G. B'/2774/08.07.2020), provision was made for vouchers for child care and care for persons with disabilities, with a view to increasing the employability of low income beneficiary men and women. Concerning the number of childcare facilities, the Committee notes that in its report and supplementary information the Government indicates that: (1) according to 2020 data, there are a total of 2489 public and 1437 private childcare facilities, benefiting 65376 and 71976 children respectively; and (2) pursuant to article 12 of Law No.1483/1984, when constructing their buildings, industrial undertakings or holdings with a staff of more than three hundred persons, are required to foresee the provision of adequate and appropriate accommodation for a nursery school covering the needs of workers (in this context, the Manpower Employment Organization has the responsibility for the operation of 25 nurseries nationwide, hosting 1.061 toddlers and infants). The Committee however notes that the GSEE expresses concern at the continuous reduction of the available day-care facilities for children and dependent persons and refers in this regard to the 2016 Annual report of the National Commission for Human Rights which highlighted the continuous reduction of the already insufficient day-care facilities for children and dependent persons limiting women's ability to take up employment or keeping them in jobs with reduced rights (NCHR, Annual report, 2016). The Committee also notes that, in its observations presented on the implementation of the ILO Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Hellenic Federation of Enterprises and Industries (SEV) highlights that it is essential to increase and ensure better availability, accessibility and quality of formal care facilities, especially for infants and preschool children, to increase the active participation of women in the labour market. It further notes that the European Commission recently indicated that, as regards the availability of childcare facilities, the situation in Greece, which has a participation rate lower than 10 per cent, hardly improved at all (European Commission, 2019 Report on equality between men and women in the EU). Furthermore, it notes that, in December 2018, the GSFPGE highlighted the need for additional measures for the participation of children in preschool education, which will contribute to the reconciliation of family, personal and professional life of their parents, especially women (GSFPGE, E-bulletin No. 18, 17 December 2018). The Committee notes that, in April 2019, the UN Working Group on Discrimination Against Women in Law and Practice also considered that a major issue of concern for gender equality is the severe reduction of state-provided care services for children and dependent persons which intensifies women's unpaid care work, limiting their ability to access or remain into the labour market, Greece having very low rates of childcare and childcare being costly. ***The Committee asks the Government to continue taking appropriate steps in order to effectively ensure adequate, affordable and accessible childcare services and facilities, with a view to assisting men and women workers to reconcile work and family responsibilities. It further asks the Government to provide information on: (i) the extent of childcare, and family services available for men and women workers with family responsibilities; and (ii) the number of workers with family responsibilities making use of the existing childcare and family services and facilities.***

*Article 8. Protection against dismissal.* The Committee previously noted the rapid increase in the number of complaints relating to the dismissal of pregnant women, despite Act No. 3896/2010 (sections 16 and 20) and Act No. 3996/2011 which provide specific protection against unfair dismissal and extend to 18 months the period of time during which working mothers cannot be dismissed after their return from maternity leave. The Government indicates that, pursuant to section 52 of Law No. 4075/2012, dismissal on the ground of an application for granting parental leave is null and void. The Committee notes that NAPGE 2016–2020 sets, among its specific actions: (1) the protection of pregnant women, including through the elimination of abuse of dismissal for a "significant reason"; (2) the protection of women against discrimination on the grounds of pregnancy or maternity; and (3) the monitoring of complaints concerning discrimination on the ground of family responsibilities against men and women. It further notes the Government's indication that the Labour Inspectorate, in cooperation with the Ombudsperson, is the relevant body to address complaints on violations of worker's rights and that, in

2018, Labour Inspectorate Regional Directorates handled 15 cases regarding women who were forced to resign or dismissed during maternity protection period. The Committee notes that, in its 2018 special report on equal treatment, the Ombudsperson indicated that the substantial number of reports relating to the dismissal of pregnant women in the private sector demonstrates that despite enhanced legislative protection, the relevant prohibition has not been fully understood. ***The Committee asks the Government: (i) to take appropriate steps to ensure effective protection of men and women workers against dismissal on the ground of family responsibilities, including by ensuring that effect is given in practice to sections 16 and 20 of Act No. 3896/2010 and Act No. 3996/2011; and (ii) to provide information on any cases of dismissal of workers on the ground of family responsibilities dealt with by the labour inspectors, the Ombudsman, or the courts as well as the sanctions imposed and remedies granted.***

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

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### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

*Article 1(1)(a) and (b) of the Convention. Anti-discrimination legislation. Civil service.* In its previous comment, the Committee underlined that Act No. L/2014/072/CNT issuing the Labour Code of 2014 excludes public officials from its scope of application (section 2) and that section 11 of Act No. L/2001/028/AN of 31 December 2001 issuing the Civil Servants Regulations only prohibits discrimination between officials on the basis of political, trade union, philosophical or religious views, and on the basis of sex or ethnic origin. The Committee has been underlining in its comments since 1990 that the legal protection of public officials is inadequate both regarding the grounds of discrimination, since it does not cover discrimination based on race, colour, national extraction and social origin, and regarding the scope of application, as recruitment is not covered. ***The Committee notes that the Government's report contains no information concerning the protection of public officials from discrimination, and requests the Government to take the necessary steps, in the very near future, to amend section 11 of Act No. L/2001/028/AN issuing the Civil Servants Regulations, so as to ensure that civil servants and applicants to a post in the public service are effectively protected against any direct or indirect discrimination on the basis of at least the seven grounds of discrimination listed in Article 1(1)(a) of the Convention. The Government is requested to provide information on any measures taken in this regard and on any complaint mechanism enabling applicants for employment in the civil service to lodge an appeal if they consider that they have suffered discrimination during recruitment.***

*Discrimination on the basis of sex. Sexual harassment.* The Committee notes that the Government's report contains no information on sexual harassment. In that regard, it notes the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights, which emphasize that "the number of cases of violence against women, particularly [...] sexual violence, remains very high" (E/C.12/GIN/CO/1, 30 March 2020, paragraph 20). ***The Committee again requests the Government to take measures to: (i) prevent sexual harassment in employment and occupation, such as awareness-raising campaigns (for example, by radio or through other media) or reinforcing prevention activities by the labour inspectorate in this area; and (ii) inform workers, employers and their respective organizations of their rights and obligations in this area. It requests the Government to provide information on any measures adopted for this purpose. The Government is once again requested to consider whether complaint and appeal mechanisms established at the national and enterprise levels are sufficiently accessible to complainants and whether they allow perpetrators of sexual harassment to be sanctioned. The Government is requested to provide information, as the case may be, on results obtained and the follow-up measures envisaged.***

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

### Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1995)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 3 and 6 of the Convention. National policy. Information and education.* The Committee recalls that, according to *Article 3* of the Convention, "with a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities". Such measures belong in the context of the broader issue of gender equality. It is essential, therefore, that the policy be designed not only to eliminate all discrimination against workers with family responsibilities in law and practice, but that active measures should be taken to promote the principle of equality of opportunity and treatment for workers with family responsibilities in all areas of employment and occupation (see General Survey of 1993 on workers with family responsibilities, paragraphs 54–59). For almost 20 years, the Committee has been emphasizing that "family responsibilities" are not among the grounds of discrimination

expressly prohibited by the Labour Code. The Committee notes the Government's indication, in its report, that it will take steps to enable men and women with family responsibilities to enjoy their rights. ***Recalling that there is still no national policy concerning workers with family responsibilities, the Committee urges the Government to take the necessary measures, in law and practice, to ensure that men and women workers with family responsibilities who so wish are able to access employment or be engaged in employment without discrimination and, if possible, without conflict between their employment and family responsibilities, including: (i) by expressly prohibiting in the Labour Code any discrimination on the basis of family responsibilities in all forms of employment and occupation, including at the recruitment level; (ii) by allowing workers with family responsibilities to be informed of their rights and to assert them; and (iii) by adopting a combination of support measures and public information and awareness-raising measures on the problems that workers with family responsibilities face, as well as measures to promote mutual respect and tolerance within the population.***

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

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

## Guinea-Bissau

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)

The Committee takes note of the Government's report.

*Article 1 of the Convention. Equal remuneration for men and women for work of equal value. Legislation.* The Committee previously noted that, while section 156(3) of the General Labour Act provides for the right to equal pay for equal work, the principle of equal remuneration for men and women for work of equal *value* set out in the Convention had been included in the draft new Labour Act, as well as in the draft Uniform Labour Act of the Organization for the Harmonization of Business Law in Africa (OHADA), which is intended to have direct force of law in Guinea-Bissau once it is adopted. The Committee notes the Government's indication, in its reports, that: (1) a request was made to place the draft new Labour Act on the agenda of the People's National Assembly; and (2) the draft Uniform Labour Act of OHADA has not been adopted yet as a result of disagreements expressed by OHADA Members States, some provisions of the draft Uniform Labour Act being incompatible with their national legislation. It further notes that in July 2019, the Economic Community of West African States (ECOWAS) Ministers adopted a draft Directive of Minimum Standards towards Harmonization of Labour Laws in ECOWAS Members States, elaborated in collaboration with the ILO. ***While aware of the difficulties facing the country, the Committee urges the Government to take concrete legislative steps in the near future so as to ensure that any new legislation will fully reflect the principle of the Convention of equal remuneration for men and women for work of equal value, in order to cover not only situations where men and women are performing the same or similar work but also situations where they carry out work that is of an entirely different nature but is nevertheless of equal value. It asks the Government to report on any progress made in this regard, in particular concerning the adoption of the draft new Labour Act, the draft Uniform Labour Act of OHADA, and the draft Directive of Minimum Standards towards Harmonization of Labour Laws of ECOWAS. The Committee again asks the Government to forward a copy of the new Public Servants Statute which was awaiting promulgation according to the Government's previous report.***

*Article 2. Promotion of gender equality. Addressing the gender pay gap.* Referring to its previous comments where it asked the Government to take proactive steps to promote and facilitate the application of the provisions of the Convention in practice, including through public information campaigns and awareness-raising initiatives, the Committee notes the Government's statement that the Convention is awaiting implementation and that more actions will be needed in practice to really implement the principle of the Convention, including with the assistance of the ILO. The Committee notes that, according to the United Nations Development Programme (UNDP), the participation rate of women in the labour market has slightly increased since 2013 (67.3 per cent in 2019 compared to 66.5 per cent in 2013), but still remains substantially lower than that of men (78.9 per cent in 2019). It takes note of the adoption of the Second National Policy for the Promotion of Gender Equality and Equity (PNIEG II) in 2016, which acknowledges the lack of access of women to higher education and vocational training, and women tending to be concentrated in areas performing specific duties that do not involve decision-making nor good remuneration, such as in the tourism and hotel sector. It notes that the PNIEG II provides for combating gender-based stereotypes by ensuring greater access of women to decision-making positions and entrepreneurship (pp. 54 and 57). The Committee notes that, as recently highlighted in the context of the Universal Periodic Review, compared with men, women have reduced incomes, higher rates of unemployment, and greater difficulties in overcoming poverty (A/HRC/WG.6/35/GNB/2, 4 November 2019, paragraph 60 and A/HRC/29/31/Add.1, 1 April 2015, paragraphs 30 and 37). ***While acknowledging the financial constraints faced by the country and in light of the persistent gender stereotypes that shape the roles and responsibilities of women and men in all spheres of life, the Committee urges the Government to ensure the effective implementation of the Second National Policy for the Promotion of Gender Equality and Equity, in order to address the gender pay gap by identifying and addressing its***

***underlying causes (such as stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family) and by promoting women's access to a wider range of jobs with career prospects and higher pay. It asks the Government to report on the concrete actions and programmes implemented to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value. The Committee recalls that the Government can avail itself of the technical assistance of the Office in this regard.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)

The Committee takes note of the Government's report.

*Article 1 of the Convention. Legislative protection against discrimination.* The Committee recalls that article 24 of the Constitution and sections 24(d) and 155 of the General Labour Act No.2/86 do not prohibit discrimination on the grounds of colour, social origin and national extraction, which are listed in *Article 1(1)(a)* of the Convention, and that domestic workers are explicitly excluded from the scope of application of the General Labour Act (section 1(2)). The Committee previously noted that the Government was in the process of elaborating a new Labour Act, and that the draft Uniform Labour Act of the Organization for the Harmonization of Business Law in Africa (OHADA), which will have direct force of law in Guinea-Bissau once it is adopted, includes provisions prohibiting discrimination in employment and occupation in accordance with the Convention. The Committee notes the Government's indication in its reports that: (1) a request was made to place the new Labour Act on the agenda of the People's National Assembly; and (2) the draft Uniform Labour Act of OHADA has not been adopted yet as a result of disagreements expressed by the Member States of OHADA (which has 17 Member States), as some provisions of the draft Uniform Labour Act are incompatible with their national legislation. It further notes that in July 2019, Ministers of the Economic Community of West African States (ECOWAS) adopted a draft Directive of Minimum Standards towards Harmonization of Labour Laws in ECOWAS Member States, elaborated in collaboration with the ILO. ***While aware of the difficulties facing the country, the Committee urges the Government to take measures in the near future to ensure that any new legislation: (i) prohibits direct and indirect discrimination on at least all the grounds enumerated in Article 1(1)(a) of the Convention, including colour, national extraction and social origin, with respect to all aspects of employment and occupation; and (ii) covers all categories of workers, in both the formal and informal economy, including domestic workers. It asks the Government to provide information on: (i) any progress made in this regard, in particular concerning the adoption of the draft new Labour Act, the draft Uniform Labour Act of OHADA, and the draft Directive of Minimum Standards towards Harmonization of Labour Laws of ECOWAS; and (ii) the specific measures implemented to ensure that the protection of men and women workers against discrimination in employment and occupation is ensured in practice, in particular for domestic workers who are excluded from the scope of the General Labour Act.***

*General observation of 2018.* The Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and asks the Government to provide information in response to the questions raised in that observation.***

*Articles 2 and 3. Equality of opportunity and treatment for men and women.* The Committee notes with ***interest***: (1) the adoption of the Gender Parity Act No. 4/2018, promulgated in December 2018, which provides for a minimum representation of 36 per cent of women candidates on party lists for legislative and local elections or appointments to the National Assembly and local governments; as well as (2) the adoption of the Second National Policy for the Promotion of Gender Equality and Equity (PNIEG II) in 2016

as well as of its Action Plan 2016–25. It notes that, according to the PNIEG II, the situation of women in education and employment is characterized, inter alia, by: (1) a high illiteracy rate (56 per cent), a low school enrolment rate (67 per cent) and a significant school drop-out rate (18 per cent); (2) a lack of specialized training in different technical and occupational areas; (3) discrimination on the basis of sex; (4) a lack of knowledge of their rights and a traditional culture of silence; and (5) the lack of strategy to promote entrepreneurship, which all limit their economic independence. It further notes that the PNIEG II sets as specific objectives and actions: (1) the adoption of an agenda on gender equality and equity in education; (2) the enhancement of women's access to higher education and vocational training, particularly in the sciences, as well as the access of women and men to equal productive and economic opportunities; (3) the enhancement of women's empowerment and entrepreneurship, including by ensuring access to credit for 35 per cent of women; (4) the promotion of women's participation in public and political life and decision-making; and (5) the implementation of awareness-raising activities on gender equality instruments adopted at national and international levels. Furthermore, the Committee notes that the Strategic and Operational Plan "*Terra Ranka*" 2015–20 provides for the implementation of projects promoting women's entrepreneurship. The Committee welcomes these initiatives and notes that, according to the United Nations Development Programme (UNDP), while the participation rate of women in the labour market has increased slightly since 2013 (67.3 per cent in 2019 compared to 66.5 per cent in 2013), it still remains substantially lower than that of men (78.9 per cent in 2019). Furthermore, according to the 2019 report of the United Nations Secretary-General on developments in Guinea-Bissau and the activities of the United Nations Integrated Peacebuilding Office in Guinea-Bissau, despite the adoption of the Gender Parity Act, in the March 2019 legislative elections only 13 women secured parliamentary seats, the same number as in the previous legislature before the enactment of the Act (S/2019/664, 7 February 2019, paragraphs 10 and 68). While acknowledging the financial constraints faced by the country, the Committee notes that, as recently highlighted in the context of the Universal Periodic Review (UPR): (1) the low human development indicators in Guinea-Bissau particularly affect women and the gender inequality gap is still very wide; and (2) there is a great need to reinforce positive social norms to prevent cultural and traditional practices that discriminate against women, particularly with regard to women's access to land and economic resources, which remains very limited in practice (A/HRC/WG.6/35/GNB/2, 4 November 2019, paragraphs 11, 41 and 62; and A/HRC/29/31/Add.1, 1 April 2015, paragraphs 27 and 38). Concerning education, the Committee notes that, according to the 2019 UNICEF Country Office Annual Report, almost half of girls who were enrolled in primary school dropped out before completing, mainly because of early pregnancy or early marriage. It refers, in that regard, to its 2019 direct requests on the application of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), in which it expresses concern at the gender and geographical disparities with regard to access to and the quality of education, particularly regarding the situation of girls in foster families, who are exposed to various forms of exploitation and are denied education. ***In light of the persistent gender stereotypes that shape the roles and responsibilities of women and men in all spheres of life, the Committee asks the Government to take proactive measures to ensure the effective implementation of the Second National Policy for the Promotion of Gender Equality and Equity and its Action Plan 2016–25, as well as of the Strategic and Operational Plan "Terra Ranka" 2015–20, to improve equality of opportunity and treatment between men and women in all aspects of employment and occupation through the adoption of effective measures to: (i) enhance women's entrepreneurship and access to vocational training, the labour market, land and credit; and (ii) improve the net school attendance rate for girls, while reducing their early drop-out from school. It asks the Government to provide information on the results of the actions and programmes implemented to that end and on any activities undertaken, including in collaboration with employers' and workers' organizations, to raise public awareness and understanding of the Convention among workers, employers and their representative organizations, as well as among law enforcement officials.***

*Article 5. Restrictions on the employment of women. Prohibition of night work by women.* The Committee recalls that the General Labour Act provides for: (1) the adoption of supplementary legislation to prevent women from being employed in hazardous occupations (section 155(4)); and (2) the prohibition of night work by women, except in managerial posts or posts of a technical nature involving responsibility, in hygiene, health or social welfare services, in the event of unforeseeable situations of force majeure, and in posts which by their nature can only be performed at night (section 160). The Committee wishes to recall that protective measures for women may be broadly categorized into those aimed at protecting maternity in the strict sense, which come within the scope of *Article 5*, and those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society, which are contrary to the Convention and constitute obstacles to the recruitment and employment of women. In addition, provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (2012 General Survey on the fundamental Conventions, paragraphs 839 and 840). ***In light of the prevailing gender stereotypes, the Committee urges the Government to review the***

***prohibition of night work by women and its approach regarding restrictions on women's employment. It asks the Government to take the necessary measures to amend sections 155(4) and 160 of the General Labour Act, in particular in the context of the ongoing legislative developments, to ensure that any restrictions on the work that can be performed by women are limited to maternity protection in the strict sense, and are not based on stereotypical perceptions about their capabilities and role in society which would be contrary to the Convention. It asks the Government to provide information on any progress made in this regard.***

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

## Guyana

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Legislation.* Since 1998, the Committee has been referring to the need to amend section 2(3) of the Equal Rights Act No. 19 of 1990 which provides for "equal remuneration for the same work or work of the same nature" in order to bring it into conformity with the provisions of the Convention and align it with the Prevention of Discrimination Act No. 26 of 1997 (section 9(1)), therefore reflecting the principle of equal remuneration for men and women for work of equal value. The Committee notes once again with ***regret*** that no progress has been reported by the Government in its report. The Committee recalls that it considers that the coexistence of the two different concepts in the current legislation has the potential to lead to misunderstanding in the application of the principle of the Convention. ***The Committee urges the Government to take steps to amend section 2(3) of the Equal Rights Act No. 19 of 1990 with a view to bringing it into conformity with the principle of the Convention and aligning it with the Prevention of Discrimination Act No. 26 of 1997 so as to remove any legal ambiguities.***

*Article 2. Minimum wage.* The Committee notes that the Government indicates that the National Minimum Wage Order which was adopted in July 2013 does not provide for a distinction of rates of pay on the basis of sex or gender. The Committee notes the adoption in October 2016 of a new Labour (National Minimum Wage) Order which raised the minimum wage in the private sector from 35,000 to 44,000 Guyanese dollars (GYD) per month (around US$210.50). The Committee also notes from the speech on the budget made by the Minister of Finance in November 2018 that "the Government has also raised the minimum basic salary for each public servant to GYD64,200 per month" (paragraph 3.30). The Committee wishes to point out that as women predominate in low-wage employment, and that a uniform national minimum wage system helps to raise the earnings of the lowest paid, it has an influence on the relationship between men and women's wages and on reducing the gender pay gap (see General Survey of 2012 on the fundamental Conventions, paragraph 683). ***The Committee asks the Government to provide information on the proportion of men and women workers, disaggregated by sex, to which the new national minimum wage in the private sector and the minimum basic salary in the public sector apply. The Committee asks the Government to provide any information available, including studies, showing the impact of the introduction and increase of the national minimum wage and the increase of the minimum basic salary on the earnings of women in both the public and the private sectors and the gender pay gap.***

*Articles 2(2)(c), 3 and 4. Collective agreements and cooperation with employers' and workers' organizations. Objective job evaluation and wage determination.* In its previous comments, in order to facilitate the application of the principle of the Convention and to ascertain whether jobs done traditionally by women are undervalued in comparison with jobs done traditionally by men, the Committee asked the Government to indicate whether objective job evaluations were undertaken or envisaged in the public and private sectors and, if so, to specify the method and the evaluation criteria used. The Committee notes the Government's indication that rates of remuneration are fixed through the collective bargaining and negotiation process, without due regard to the differences in sex or gender. While noting this information, the Committee recalls that men and women tend to perform different work using different skills. Therefore, for the purpose of ensuring equal remuneration for men and women for work of equal value and avoiding an undervaluation of work traditionally performed by women, the Committee wishes to emphasize the importance of evaluating each job concerned on the basis of criteria free from gender bias, such as skills/qualifications, effort, responsibilities and working conditions, when determining rates of remuneration. ***The Committee asks the Government to take concrete steps to raise awareness among workers' and employers' organizations about the principle of equal remuneration for men and women for work of equal value and the need to use objective job evaluation methods and criteria to avoid undervaluation of jobs traditionally performed by women when fixing rates of remuneration. The Committee asks the Government to provide detailed information on the manner in which rates of remuneration are determined by the social partners, including on the method and criteria used. The Committee further asks the Government to indicate whether rates of remuneration are determined by collective bargaining in the public sector.***

*Statistics.* The Committee recalls that appropriate data and statistics are crucial for determining the nature, extent and causes of unequal remuneration, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures and make any necessary adjustments in order to better promote the principle of equal remuneration for men and women for work of equal value. ***Therefore, the Committee asks the Government to provide any statistical data available, disaggregated by sex, on the distribution of men and women in the various economic sectors and occupations, and on their corresponding earnings, in both the public and private sectors.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1975)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Equality of opportunity and treatment for men and women.* In its previous comments, the Committee asked the Government to provide information on the specific measures taken in the framework of the five-year Strategic Plan of the Women and Gender Equality Commission of the National Assembly to promote gender equality in employment and occupation, including vocational training, and to enhance women's access to all jobs, including those in non-traditional areas and decision-making positions in both the private and public sectors. The Committee notes that, in its ninth periodic report to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) (2018), the Government provided detailed information on the situation of women, but the information provided did not contain answers to the questions raised by the Committee of Experts. According to the Government's report to the CEDAW, "it is estimated that women's share of the workforce is 34.6 per cent and that 65.4 per cent of these women are not engaged in the formal economy. The national census (2012) noted that the majority of these women (48.6 per cent) are engaged in unpaid work (home duties), while others pursue educational advancement (8.0 per cent) and the remainder (7.1 per cent) are women retirees. The Government adds that, according to the World Bank's Enterprise Survey (2010), mentioned in the Government's report to the CEDAW, women are under-represented in the top management of private sector firms with a mere 17 per cent as managers. However, female participation in ownership of private firms is significantly higher with 58 per cent (CEDAW/C/GUY/9, 10 July 2018, paragraph 89). The Government's report to the CEDAW further indicates that women in unionized agricultural production comprise 20 per cent of the workforce. It adds that temporary special measures have been implemented to address discrimination against women in the fields of microcredit, as well as education and training. The Committee welcomes the Government's indication in the above report that "gender parity has been achieved in primary education at the national level". However, the report adds that, despite significant progress in the promotion of women in traditionally male-dominated sectors (engineering, electrical and construction), the overall enrolment in technical and vocational education and training in 2011–14 for women was 38 per cent compared to 62 per cent for males. The Committee notes that, according to the report to the CEDAW, "consistent efforts have been made to reverse and eliminate the persistence of gender stereotyping, negative cultural attitudes and other discriminatory practices" (CEDAW/C/GUY/9, paragraphs 48, 78 and 91). The Committee further notes from the ILO 2018 Country Report on Guyana (*Gender at work in the Caribbean*) that the Ministry of Social Protection also collaborates with international agencies to execute projects that can assist women in vulnerable situations to address systematic barriers to their participation and performance in the labour force and their ability to carry out caring work, particularly in relation to poverty and HIV stigma and discrimination. The Government also has instituted several training programmes with job skills for women, with a focus on single parents, who often face special difficulties in accessing the labour market and finding jobs. ***The Committee asks the Government to continue taking active steps to remove obstacles that hinder women's access to, and advancement in, employment and occupation, including awareness-raising measures to combat any gender stereotypes and patriarchal attitudes that assume that the burden of domestic and caring responsibilities must be borne by women. The Committee asks the Government to clarify the status of the National Gender and Social Inclusion Policy and, if adopted, to provide specific information on the steps taken in practice to implement it, and particularly details on the results achieved in employment and occupation. The Government is also asked to provide information on the activities of the Women and Gender Equality Commission (WGEC), including the results achieved in the framework of the above-mentioned five-year Strategic Plan, and on the activities of the Gender Affairs Bureau (GAB).***

*Article 1(1)(a). Multiple discrimination, including discrimination based on race. Persons of African descent, in particular women.* The Committee notes from the Report of the United Nations Working Group of Experts on People of African Descent following its mission to Guyana (from 2 to 6 October 2017) that the Government has not developed a specific national action plan to combat racism, racial discrimination, xenophobia or other forms of intolerance. It further notes the indication that "Afro-Guyanese women often face inequalities and multiple forms of discrimination on the grounds of their race, colour, gender and religious belief" and that, although the participation of women in the labour force is rising, women are also increasingly concentrated in low-paying jobs. The Committee notes the concern expressed by the Working Group at the high drop-out rates of girls (A/HRC/39/69/Add.1, 13 August 2018, paragraphs 30-31). ***The Committee asks the Government to provide information on the steps taken in practice to address discrimination faced by persons of African Descent, in particular women and girls, with respect to access to and advancement in education and employment and occupation. The Government is also asked to provide any available information on the situation of men and women of African descent in employment and occupation, in particular in rural areas.***

*Indigenous peoples.* The Committee notes from the ILO 2018 Country Report mentioned above that the original peoples (Amerindians) represent 10.5 per cent of the population. The Committee notes from the website of the Ministry of Indigenous Peoples' Affairs that, over the past three years, 2.3 billion Guyanese dollars (GYD) have been devoted to hinterland youth empowerment, which has resulted in the establishment of 2,054 successful businesses. The youths were trained under the Hinterland Employment and Youth Service (HEYS) programme, which succeeded the Youth Entrepreneurship and Apprenticeship Programme (YEAP), that targeted approximately 4,000 youths in the 215 indigenous villages and communities across the country. ***The Committee asks the Government to continue taking steps promoting a wide range of training and employment opportunities for members of indigenous peoples and to provide information on the development and results of the HEYS programme. The Committee also asks the Government to provide any available information, disaggregated by sex, on the situation of persons from indigenous peoples in employment and occupation, including in entrepreneurship and traditional activities. The Government is asked once again to provide detailed information on the activities carried out by the Ethnic Relations Commission and the Indigenous Peoples Commission and their impact in the fields of education, training, employment and occupation.***

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee noted with

concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continues to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considered that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. ***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

*Discrimination based on sexual orientation and gender identity*. The Committee also notes from the ILO 2018 Country Report that "there are no laws relating to gender identity" although "there are substantial reports of discrimination against transgender persons and other members of the LGBTI community with regard to accessing employment opportunities". In this regard, the Committee further notes from the report of the United Nations Working Group of Experts on People of African Descent that "civil society entities reported that discrimination against lesbian, gay, bisexual and transgender persons and sex workers was widely prevalent". Transgender Guyanese persons in particular are criminalized and stigmatized, and subjected to discrimination because they are more visible than other members of the lesbian, gay and bisexual community (A/HRC/39/69/Add.1, 13 August 2018, paragraph 33). ***The Committee asks the Government to provide information on any steps taken or envisaged to prevent and address discrimination based on sexual orientation and gender identity in employment and occupation, including legislative and awareness-raising measures.***

*Enforcement and statistics.* The Committee notes from the ILO 2018 Country Report that "it has been reported that the laws to prevent discrimination are not effectively enforced". The Committee notes the Government's indication that the data requested are not available. ***The Committee once again asks the Government to provide information on the enforcement of the legislation prohibiting discrimination on the grounds set out in the Convention and to take active steps to ensure effective access to and the functioning of the enforcement mechanisms dealing with complaints of discrimination. The Government is also asked to take the necessary steps to ensure that it is in a position to collect and compile statistical data, disaggregated by sex, on the participation of men and women, as well as the different ethnic groups, in the various sectors and occupations.***

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

## Honduras

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

The Committee notes the observations of the Honduran National Business Council (COHEP), received on 1 October 2020 concerning the compilation of statistics and consultations with the social partners and the Government's reply received on 6 November 2020.

The Committee notes the supplementary information provided by the Government on the matters raised in the direct request addressed to it, and reiterates the content of its observation adopted in 2019, which is repeated as follows.

The Committee notes the observations of the General Confederation of Workers (CGT), the Workers' Confederation of Honduras (CTH) and COHEP, sent with the Government's report, as well as the observations of the COHEP, received on 2 September 2019 and the response of the Government received on 9 October 2019.

*Articles 1 and 2 of the Convention. Gender pay gap. Statistics.* In its previous comments, the Committee requested the Government to provide information on the progress it had made to reduce the gender pay gap. The Committee notes the Government's indication in its report that since 2018, the pay gap has been more favourable to women in the private and public sectors, given that women have higher levels of schooling and work more in urban areas. In this regard, the Government provides a set of data disaggregated by sex, including statistics on: average income by branch of activity, minimum wages by branch of activity, and minimum wages by occupation (levels of responsibility). The Committee notes the Government's indication that it lacks information to be able to conduct an analysis, explaining that the only source of information on the labour market is the permanent household survey of National Institute of Statistics (INE). The Committee notes that, in their observations, the CGT and CTH indicate that, in practice, significant gender pay gaps do exist, particularly in the public sector, and that it would be important to make a comparison by position. The Committee also notes that, in its observations, the COHEP indicates that the statistical data provided by the Government needs to be reviewed and refers to a series of surveys conducted by businesses on the participation of women in the workplace (the report on women in business management *"Mujeres en la gestión empresarial"* and the Market Systems Survey Analysis *"Encuesta de diagnóstico sistemas de mercado"* and the projects on Human Rights Due Diligence of Companies in relation to the Supply Chain *"La debida diligencia empresarial en materia de derechos humanos en relación con la cadena de suministros"*). COHEP notes that 98 per cent of companies consulted as part of the project on Human Rights Due Diligence of Companies in relation to the Supply Chain provide equal pay to men and women for the performance of the same work. While noting this information, the Committee observes that the data provided do not allow the comparison of the pay of men and women in different positions and at levels of responsibility by which may nonetheless be of equal value. In so doing, the Committee draws to the attention of the Government that the principle of equal pay for work of equal value not only requires equal pay for the same work but also equal remuneration for jobs that may be entirely different but nevertheless of

equal value (see 2012 General Survey on fundamental Conventions, paragraphs 667 and 679). ***In order to be able to conduct a detailed analysis and with full knowledge of the facts on the gender pay gap, the Committee requests the Government to make every effort to compile the most comprehensive statistics possible on the level of pay for men and women in the private and public sectors. In this regard, the Committee refers in particular to its general observation concerning the application of the Convention adopted in 1998.***

*Article 1(b). Work of equal value. Legislation.* In its previous comments, the Committee noted that section 367 of the Labour Code and section 44 of the Equal Opportunities for Women Act (LIOM), as well as Decree No. 27-2015, do not ensure the application of the principle of equal remuneration for work of equal value, and requested the Government to report on any legislative amendments. The Committee notes the Government's indication in its report that: (1) labour law reform begins with the submission to the Economic and Social Council (CES) of the intention to reform or amend the Labour Code; and (2) the National Institute for Women (INAM) has initiated a proposal to reform the LIOM and a number of meetings between representatives of the various state institutions and of civil society have been held on that matter; and (3) the highest-ranking authorities have been informed so that they can begin taking the necessary measures to bring the labour legislation into line with international Conventions. The Committee also notes that, in its observations, the COHEP indicates that no employers' association has been convened to analyse the LIOM reform, and that it has not been submitted to the CES. ***The Committee trusts that the necessary measures will be taken to ensure that the legislation duly reflects the principle of equal pay for men and women for jobs that are of a different nature, but are of equal value, and requests the Government to provide information in this regard.***

***The Committee also recalls the importance of consultations with the social partners in the process of labour law reform, and trusts that the Government will ensure this occurs in relation to any measures implementing the principle of the Convention.***

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

## Hungary

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

*Article 1 of the Convention. Discrimination in employment and occupation. Legislation.* The Committee recalls its previous comments on the Labour Code 2012, in which it noted that the Labour Code, although providing for the principle of equal treatment (section 12), does not explicitly prohibit discrimination nor does it enumerate any prohibited grounds of discrimination or refer to the prohibited grounds enumerated in the Equal Treatment Act 2003. The Committee notes with ***regret*** the Government's indication that there have been no legislative amendments made in this regard as it considers that the current laws provide sufficient guarantees against discrimination for all employees. ***Recalling that the implementation of the Convention presupposes a clear and comprehensive legislative framework, as well as measures to ensure that the right to equality and non-discrimination is effective in practice, the Committee asks the Government to take measures, in collaboration with workers' and employers' organizations, to amend the Labour Code to include provisions defining and prohibiting direct and indirect discrimination in all aspects of employment and occupation, on at least all the grounds listed in Article 1(1)(a) of the Convention.***

*Enforcement. Labour inspection.* The Committee recalls that, following a 2012 amendment to the Labour Inspection Act of 1996, the competence of the labour inspectorate no longer covers compliance with equal treatment provisions, which is now entirely a matter for the Equal Treatment Authority (ETA). The Committee notes the Government's indication that the amendment was made because labour inspectors did not have a sufficient level of expertise to address cases of discrimination, but that they remain able to detect such cases and refer them to the competent authority. In this regard, the Committee recalls the importance of training labour inspectors to increase their capacity to prevent, detect and remedy such instances. It also recalls that labour inspectors, who have regular access to workplaces and to workers and employers, have a crucial role to play in preventing, detecting and addressing discrimination and promoting equality in employment and occupation. The Committee observes that this role is different from, but complementary to the role played by the ETA. ***The Committee therefore requests the Government to implement adequate training programmes to allow labour inspectors to effectively prevent, detect and remedy cases of discrimination in employment and occupation. It further requests the Government to consider reviewing the labour inspectorate's competences with a view to extending them to cover the legislation addressing equal treatment, and to provide information in this respect. It also requests the Government to provide information on: (i) the manner in which the labour inspectorate and the Equal Treatment Authority cooperate; and (ii) the number and nature of cases of discrimination in employment and occupation referred to the ETA by the labour inspectorate, as well as the grounds of discrimination invoked, and their outcome.***

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

## Iceland

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)

*Article 1 of the Convention. Prohibited grounds of discrimination*. For a number of years, the Committee has been requesting the Government to take the necessary measures for the adoption of anti-discrimination legislation addressing all aspects of employment and occupation and covering at least all the grounds enumerated in *Article 1(1)(a)* of the Convention. The Committee notes the adoption in 2018 of two laws covering equal treatment and non-discrimination: (1) Act No. 85 on Equal Treatment irrespective of Racial and Ethnic Origin, which requires equal treatment of persons irrespective of their race and ethnic origin in all fields of society, with the exception of the labour market; and (2) Act No. 86 on Equal Treatment in the Labour Market. The Committee notes that section 1 of Act No. 86 provides for equal treatment of individuals on the labour market, irrespective of their race, ethnic origin, religion, life stance, disability, reduced working capacity, age, sexual orientation, gender identity, sexual characteristics or gender expression. The Act applies, inter alia, to: (a) access to jobs, self-employment or occupational sectors, including with regard to engagement and promotion; (b) access to educational and vocational counselling, vocational education and vocational training; (c) decisions in connection with wages, other terms of service and notice of termination; and (d) participation in workers' and employers' organizations, including the services that they provide for their members. The Committee welcomes the inclusion of a range of prohibited grounds of discrimination in Act No. 86, but observes that it does not cover all the grounds of discrimination listed in *Article 1(1)(a)* of the Convention, namely the grounds of colour, political opinion, national extraction and social origin. ***The Committee requests the Government to take the necessary steps to amend Act No. 86 to ensure the inclusion of all the prohibited grounds of discrimination enumerated in Article 1(1)(a) of the Convention, and particularly colour, political opinion, national extraction, and social origin.***

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

## India

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)

*Article 1(a) of the Convention. Definition of remuneration.* The Committee notes, from the Government's report, that the Code on Wages was adopted and enacted in 2019, and replaced the Equal Remuneration Act (ERA), 1976, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948 and the Payment of Bonus Act, 1965. The Committee notes that under section 2(y) of the Code, the term "wages" is defined as "all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would be, if the terms of employment, express or implied, were fulfilled, payable to a person employed in respect of his employment or of work done in such employment, and includes his basic pay, dearness allowances, and retaining allowance, if any". The Committee further notes that for the application of the principle of equal wages between men and women contained in section 3 of the Code, the term "wages" also includes: the conveyance allowances or the value of any travelling concession, house rent allowance, remuneration payable under any award or settlement between the parties or order of a court or Tribunal, and any overtime allowance (section 2(y) sub-section (d), (f), (g) and (h)). However, the Code explicitly excludes from the definition of "wages" other emoluments such as bonuses, contribution paid by the employer to any pension fund, or any gratuity payable on the termination of employment. The Committee recalls that *Article 1(a)* of the Convention sets out a very broad definition of "remuneration" which includes not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment". "Remuneration" under the Convention includes wage differentials or increments, cost-of-living allowances, dependency allowances, travel allowances or expenses, housing and residential allowances. It also includes benefits in kind such as the provision of accommodation or food, and it includes all allowances paid under social security schemes financed by the undertaking or industry concerned (see General Survey of 2012 on the fundamental Conventions, paragraphs 686–692). ***The Committee therefore asks the Government to consider amending the definition of "wages" contained in section 2(y) of the Code on Wages, in order to allow for a broad definition, including any additional emoluments whatsoever, as provided for in Article 1(a) of the Convention.***

*Article 1(b). Equal remuneration for work of equal value. Legislation.* For a number of years, the Committee has been pointing out the more limited nature of the provisions of the Constitution of India (Article 39(d)) and the ERA (sections 2(h) and 4), when compared to the principle of equal remuneration for men and women for work of equal *value* as set out in the Convention. In particular, under the above legislative provisions. the principle of equal remuneration is applied to ''work of a similar nature" rather than ''work of equal *value*". In its previous comment, the Committee noted that the Government was in

the process of consolidating its labour legislation in four codes, including a Wages Code, which would cover some of the matters addressed in the ERA, and it asked the Government to make use of this opportunity to ensure that the principle of the Convention was fully reflected in the legislation. The Committee notes that section 3(1) of the Code on Wages prohibits "discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee". Under section 4, any dispute as to whether a work is of the same or a similar nature will be decided by such authority as the Government designates. The Committee notes, with ***concern***, that section 2(v) defines "same work or work of a similar nature", in the same limited wording as the ERA did, as "work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment". It notes that the Government considers this definition to be equivalent to the concept of "work of equal *value*". However, the Committee is of the view that this definition is more limited than the concept of "work of equal *value*" enshrined in the Convention. Indeed, when determining whether two jobs are of equal value, the overall value of the jobs is to be considered. In this regard, the Committee recalls that the definition should permit a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompassing work that is of an entirely different nature, which is nevertheless of equal *value*. Comparing the relative *value* of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal *value* overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the *value* of work performed by women and men free from gender bias (see the General Survey of 2012, paragraph 673-675). The Committee also draws the Government's attention to the fact that the Convention includes, but does not limit application of the principle of equal remuneration for work of equal *value* to men and women "in the same workplace", and provides that this principle should be applied across different enterprises to allow for a much broader comparison to be made between jobs performed by women and men. The Convention thus calls for the reach of comparison between jobs performed by men and women to be as wide as possible in the context of the level at which wage policies, systems and structures are coordinated (General Survey of 2012, paragraphs 697 and 698). ***Recalling that it has been raising this issue since 2002, the Committee urges the Government to take the necessary steps to ensure that: (i) the Code on Wages is amended to give full expression to the principle of equal remuneration for men and women for work of equal value as enshrined in the Convention; and (ii) it is not restricted to workers within the same workplace but applies across different enterprises and sectors. It also asks the Government to provide information on the application in practice of section 3 of the Code on Wages and to indicate the authority which is competent to handle disputes under section 4.***

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

## Indonesia

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)

*Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee recalls that for a number of years it has been asking the Government to improve the application of the Convention, including by reviewing Law No. 13/2003 concerning Manpower (Manpower Act), with a view to giving legal expression to the principle of equal remuneration between men and women for work of equal *value*, because the Manpower Act, read together with the Explanatory Notes on the Law, only provides, in general terms, for equal opportunity (section 5) and equal treatment (section 6) without discrimination based on sex. The Committee considered that such general provisions, while important, were not sufficient to give effect to the Convention, as they do not include the concept of "work of equal *value*". The Committee also recalls that in its previous observation, it welcomed section 11 of the Regulation No. 78 of 2015 on Wages, which provides that "every worker is entitled to equal wage for work of equal value". It however noted that the provision is formulated in general terms and no longer refers to non-discrimination between men and women. The Committee therefore asked the Government to provide information on: (1) the manner in which sections 5 and 6 of the Law No. 13/2003 on Manpower and section 11 of Regulation No. 78 of 2015 are being applied in practice, including any violations specifically concerning the principle of equal remuneration between men and women for work of equal value detected by, or brought to the attention of, the labour inspection services, and any action taken to remedy those violations; and (2) any administrative or judicial decisions applying the principle of the Convention. The Committee also encouraged the Government to consider, as soon as the opportunity arises, reviewing and amending the Manpower Act to give explicit legislative expression to the principle of the Convention, and to provide information on any consultations held with the social partners to this end.

The Committee notes that in its report the Government indicates that there have been no cases of wage discrimination based on gender. The Government also indicates that the application of the principle

of the Convention is ensured in practice through: (1) the obligation of companies to set up wage structures and scales applying to their employees and inform them about such structures and scales; and (2) the provision of administrative sanctions in case of non-compliance. The Government reports that, as of 2019, 9,602 companies were preparing the wage structure and scale and that no difference was found between men and women in the wage structures and scales examined. The Committee also notes that the Government, in collaboration with the social partners and the ILO, is promoting the implementation of international labour standards by export-oriented companies in the garment sector

While noting the Government's indication that no wage discrimination between men and women was found in the wage structure and scale of the companies it examined, the Committee notes that no information is provided on how the principle of equal remuneration for "work of equal *value*" between men and women is ensured in the design of the wage structure and scale. The Committee recalls that the concept of "work of equal *value*" requires going beyond ensuring equal remuneration for "equal", "the same" or "similar" work and also encompasses equal remuneration for work that is of an entirely different nature but is nevertheless of "equal *value*". This is fundamental given the occupational sex segregation in the labour market due to historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities, which has resulted in women holding predominantly certain jobs, such as in caring professions. Often these "female jobs" are undervalued in comparison with work of equal *value* performed by men when determining wage rates (See General survey on the fundamental conventions, 2012, para. 673). ***In light of the above, the Committee asks the Government: (i) to indicate how it is ensured that the procedures adopted in determining wages (including wage increases) are free from gender bias, and that the work performed by women is not being undervalued in comparison to that of men who are performing different work and using different skills while charged with different responsibilities under different working conditions; (ii) to provide information on measures adopted or envisaged in order to ensure the application of the principle of the Convention in the design of wage structures and scales; and (iii) to supply information on any specific measures adopted to raise awareness about the principle of the Convention among government officials, employers and workers and their organizations, in particular in the garment sector. The Committee also encourages the Government to consider reviewing and amending the Manpower Act to give explicit legislative expression to the principle of equal remuneration for men and women for work of equal value, in consultation with the social partners, and asks the Government to provide information on any developments in this regard.***

*Article 2(2)(a). Discriminatory provisions with respect to benefits and allowances.* For more than ten years, the Committee has been drawing the Government's attention to the fact that section 31(3) of Law No. 1/1974 concerning Marriage, which identifies the husband as the head of the family, may have a discriminatory impact on women's employment-related benefits and allowances due to the fact that women in the workforce are assumed to be either single or seeking a supplementary income and are often not entitled to family allowances. The Committee notes that the Government refers to section 6 of the Manpower Act and section 11 of the Regulation No. 78 of 2015 on Wages, which have been mentioned above, and explains that more detailed provisions regarding wage components can be arranged through employment agreements, company regulations or collective labour agreements. The Committee also notes the Government's statement that it "continues to strive to ensure that work agreements, company regulations or collective labour agreements do not contain regulations with lower standards than stipulated in laws and regulations". The Committee further notes the Government's explanation that the Marriage Act is not used as a reference when regulating work relations. The Committee recalls that differential treatment in respect of remuneration is often linked to the express and implied assumption that the man is the "breadwinner" or the "head of the household" for the purpose of receiving certain allowances or benefits and notes the possibility of allowing both spouses to choose who would benefit from such allowances, rather than starting from the point that they should systematically be paid to the man (2012 General survey para. 693). ***In light of all the above, the Committee encourages the Government to gather information, in collaboration with the social partners, on women's access in practice to family allowances and employment-related benefits, and to provide information in this regard. In the meanwhile, the Committee asks the Government to inform about any measures taken to ensure that women do not face direct or indirect discrimination with respect to family allowances and employment-related benefits.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

*Articles 2 and 3 of the Convention. Equality of opportunity for men and women.* In its previous observation, the Committee asked the Government to continue taking specific measures, in cooperation with the social partners, to address the significant level of occupational gender segregation and to provide information on the results achieved, including with respect to the implementation of the Strategic Action Plan 2013–19 formulated by the National Task Force on Equal Employment Opportunities (EEO). In addition, the Committee asked the Government to: (1) provide detailed information on the measures

taken to promote gender equality in the public sector, including measures to improve the representation of women among regular staff; and (2) continue providing detailed statistical information on the distribution of men and women in the various posts and occupations in the public service. The Committee notes the Government's indication in its report that it has carried out various awareness-raising and capacity-building activities on equality and non-discrimination under the National Strategic Action Plan. However, it notes that the Government has not provided details of the action taken and the results achieved in addressing occupational gender segregation. Concerning the promotion of gender equality in the public sector, the Committee notes that the Government refers to Regulation No. 14 of 2018 on the recruitment process and indicates that it is based on the candidates' competencies. The Government adds that women represent 51 per cent of the total of 4.1 million civil servants.

The Committee notes that, according to the ILO Database of Labour Statistics (ILOSTAT), 51 per cent of working age women participate in the workforce, compared with 78 per cent of working age men. It also notes from the ILO research brief "Leading to success: The business case for women in business and management in Indonesia", June 2020 (ILO Women in Science, Technology, Engineering and Mathematics (STEM) project), that women are over-represented in temporary and part-time employment and comprise the majority of employees in the services sector. Concerning women in agriculture, the Committee notes from the report of the United Nations Special Rapporteur on the right to food on her visit to Indonesia that women working in agriculture receive lower pay compared with men and that many of them work informally under precarious conditions (A/HRC/40/56/Add.2, 28 December 2018, paragraph 54). The Committee also notes from the same source that the Laws on Food (No. 18/2012), Farmers' Protection and Empowerment (No. 19/2013) and Protection and Empowerment of Fisherfolk, Fish Farmers and Salt Farmers (No. 7/2016) do not explicitly recognize women as stakeholders. The Special Rapporteur emphasizes in this regard that "laws that do recognize women consider their role as part of a household, rather than as an integral part of food production. This lack of adequate recognition further undermines the rights of women to social security and welfare programmes and delegitimizes women as agricultural workers" (paragraph 55). ***In light of the above, the Committee encourages the Government to undertake, in cooperation with the social partners, an assessment of the measures adopted so far to promote equality of opportunity and treatment for men and women in employment and occupation, in both the private and public sectors, including the measures adopted under the Strategic Action Plan 2013–19 of the EEO, and to provide information on the results achieved, the obstacles identified and any follow-up action envisaged and implemented, including with regard to occupational gender segregation. The Committee also asks the Government to: (i) indicate whether a new Action Plan has been prepared by the EEO Task Force; (ii) provide information on the measures adopted to promote the application of the principle of the Convention to men and women rural workers; and (iii) provide updated statistical information on the distribution of men and women in the various sectors, occupations and positions, in the formal and informal economies.***

*Article 3(e). Access to vocational training and guidance*. In its previous observation, the Committee asked the Government to: (1) take further measures to promote women's access to a wider range of vocational training courses and occupations, including those in which men traditionally participate and those leading to opportunities for advancement, and provide information on the results achieve; and (2) continue providing detailed statistical information, disaggregated by sex, on the labour force participation rates in the various sectors and occupations in the formal and informal economies, and on the number of men and women participating in vocational training, specifying the type of courses attended. The Committee notes the Government's indication that it has made efforts to increase the population's access to training centres. The Committee also notes from the statistical information provided by the Government that women represented 37.7 per cent of all trainees in 2018 and that the largest number of women participated in training on business and management, garment, apparel, processing and beauty. The Committee further notes from the ILO research brief "Leading to success: The business case for women in business and management in Indonesia" that: (1) more women graduate from tertiary education than men and, more particularly, that women accounted for 16 per cent of those graduating from tertiary education in 1993, and that this figure rose to 59 per cent in 2018; and (2) although the majority (63 per cent) of tertiary graduates in STEM disciplines continue be men, more women are taking up STEM fields and occupations.. The Committee notes that, although some progress has been made in this regard, gender segregation in skills training appears to persist. ***The Committee asks the Government to step up its efforts to promote women's access to a wider range of vocational training courses and occupations, including those in which men traditionally participate and those leading to opportunities for advancement, and to provide information on the results achieved and statistical information on the number of men and women participating in vocational training, with an indication of the types of courses attended.***

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

# Islamic Republic of Iran

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)

The Committee takes note of the supplementary information provided by the Government following the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as the information at its disposal in 2019.

*Articles 1 and 2 of the Convention. Discrimination based on sex. Legal restrictions on women's employment.* The Committee recalls that for a number of years it has been asking the Government to repeal or amend section 1117 of the Civil Code, which allows a husband to prevent his wife from engaging in an occupation or technical profession which, in his view, is incompatible with the family's interests or the dignity of him or his wife. The Government stated in its last report that the request for an amendment to section 1117 was before the Parliamentary Legal and Judiciary Committee for review. The Committee notes the Government's indication in its report that section 1117 of the Civil Code dates back to 1935 and that now judges give it a strict interpretation and apply it in restricted circumstances. The Government considers that the application of section 1117 does not give the husband "absolute control over his wife's right to work". To corroborate this statement, the Government provides summaries of several judgements where the courts quashed husbands' motions, when they did not consider the wife's occupation to be inconsistent with "family dignity and honour or disturbing the couple's daily life". The Committee notes that the Government once again explains that there is a certain reciprocity in the law and refers to section 18 of the Family Protection Law which provides for a wife's right to prohibit her husband from participating in an occupation in limited circumstances. The Committee notes that giving both spouses the right to restrict the others' choice of work, particularly where a husband has greater opportunity to do so, does not mean that those provisions are not discriminatory. The Committee further notes, from the Report of the Special Rapporteur on the situation of human rights in Iran, 2017, that several female athletes have been restricted from participation in international tournaments either by State sporting agencies or by their husbands (A/72/322, 14 August 2017, paragraph 92). ***Noting that it has been raising this issue since 1996, the Committee strongly urges the Government to take the necessary measures to repeal section 1117 of the Civil Code to ensure that women have the right in law and practice to freely pursue any job or occupation of their own choosing.***

*Draft Comprehensive Population and Family Excellence Plan and other measures.* In its previous comment, the Committee noted that the draft Comprehensive Population and Family Excellence Plan (Bill No. 315), which established a hierarchy in hiring practices by both public and private institutions (employment was to be given first to men with children, then to married men without children and then to women with children) had been revised by a new draft of the Comprehensive Population and Family Excellence Plan (Bill No. 264) with the same objective as the former Bill, that is to achieve a fertility rate of 2.5 children per woman by 2025. The Committee noted that, while many provisions in the former Bill had been modified, Bill No. 264 maintained some of the hiring priorities: section 10 provides that governmental and non-governmental departments shall give priority in employment to married men with children and to married men without children and that the employment of single persons is permitted only in the absence of qualified married applicants. However, Bill No. 264 provides that in occupations such as medicine and teaching, due to gender segregation, women will be given priority, as an exception to this section, and where there is a need to consider women, priority will be given to women with children and married women without children. Bill No. 264 also maintains most of the provisions concerning support to women in relation to maternity protection and family responsibilities, such as extended paid maternity leave for nine months with a right to return.

The Committee notes the Government's indication that Bill No. 264 is still under review and that its concerns are being considered for the finalization of the draft Bill. The Government reports that it has called upon different agencies and reference groups to provide their opinion on the draft Bill. The Committee notes the Government's statement that alternative incentives to promote population policies are being considered. While it understands the importance of a population policy, it remains ***concerned*** about the approach taken to restrict women's access to employment in Bill No. 264, and particularly single women and women without children, in contravention of the protection against discrimination set out in the Convention. ***The Committee once again asks the Government to ensure that the measures taken to promote population policies and maternity protection do not constitute obstacles to the employment of women in practice. More specifically, the Committee firmly hopes that measures will be taken to remove all of the restrictions on women's employment in the draft Bill No. 264 and to review the prioritization of men's employment. It once again urges the Government to ensure that in practice restrictive measures are not taken through the introduction of quotas which serve to limit women's employment in the public sector.***

*Sexual harassment.* The Committee notes with ***regret*** that no measures have been taken to amend the Labour Code to explicitly define and prohibit all forms of sexual harassment at work, both quid pro quo and hostile work environment and that no information has been provided on any action taken in this respect. It notes the Government's view that there is sufficient protection considering: (1) the general status that women have in society due to the cultural and religious rules prevailing in the country; (2) the protection against sexual assault and harassment in criminal law; and (3) the general disciplinary regulations contained in labour law, including the regulations on determining cases of failure and violation of labour disciplinary circulars and regulations in workshops adopted under section 27(2) of Labour Code and the respective disciplinary regulations. The Committee further recalls that, in the Bill on Women's Security Against Violence, it is proposed to criminalize sexual harassment at work. It notes, according to the supplementary information provided by the Government, that the Bill was returned to the Government Committee of Legal Bills in late August 2020 with some amendments made by the judiciary, and is currently under final review. In this regard, the Committee recalls that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses (which is often the case), and the fact that criminal law generally focuses on sexual assault or "immoral acts", and not the full range of behaviour that constitutes sexual harassment in employment and occupation (2012 General Survey on the fundamental Conventions, paragraph 792). Furthermore, the Committee notes the Government's information on the establishment in 2015 of the National Committee for Prevention of Violence, which is responsible for dealing with all aspects of violence, including violence against women. In its supplementary information, the Government indicates that it has established a special taskforce on the security of women at the workplace, composed of academics in the field of sociology and psychology, with the aim of identifying women's issues, challenges and concerns at workplaces. The Committee takes note of this information. ***Recalling the Government's previous acceptance that clear legislation is required for effective protection against sexual harassment, the Committee once again urges the Government to amend the Labour Code to explicitly define and prohibit all forms of sexual harassment at work, both quid pro quo and hostile work environment, and to provide information on any action taken. In the meantime, the Government is asked to provide a copy of the sample disciplinary by-laws that have been developed to provide examples for workplace disciplinary committees. The Committee also asks the Government to provide information on the progress made with regard to the adoption and implementation of the Bill on Women's Security Against Violence and to provide a copy of the text once it has been adopted. Finally, the Committee asks the Government to undertake specific activities to prevent sexual harassment at work, through the Committee for Prevention of Violence and the special taskforce on the security of women at the workplace, including awareness-raising campaigns at both the national and workplace levels in respect of the public and private sectors.***

*Equality of opportunity and treatment for men and women.* With the aim of improving equal access to opportunities for women, the Government indicates that it undertook a review of the cultural barriers to equal opportunities and treatment of women and organized conferences and workshops at the national and regional levels. However, the Committee notes that the results of this review have not been communicated. The Committee welcomes the adoption of the Citizen's Charter for Human Rights, 2016, section 11 of which provides that "women have the right to take an active and effective part in policy-making, legislation, management, enforcement and supervision, and to enjoy equal social opportunities according to Islamic standards". Moreover, the Committee notes from the 2017 report of the Special Rapporteur on the situation of human rights, that the Charter is not legally binding and that it offers almost no new protection for women and minority groups (A/72/322, 14 August 2017, paragraphs 7 and 8). With regard to its previous comment, the Committee takes note of the Government's statement that numerous initiatives were undertaken to encourage women's participation in the labour market and increase their representation in management positions. Among the measures taken, the Government reports on the adoption of an executive order aiming to increase women's managerial positions to 30 per cent. The Government also indicates there has been an increase in the number of women in rural management, governors' offices, deputies and advisors in governors' general offices. The Government further refers to the preparation and implementation of the National Plan 2015–16 to Support Empowerment of Women Managers and Governors General through training and empowerment workshops, delivered to more than 1,900 women middle managers in 31 provinces. In its supplementary information, the Government indicates that the number of women managers in the country rose by 36 per cent between 2017 and 2019. The Committee welcomes the Government's indication that in 2019 there were a total of 12,850 women managers in the country, compared to 9,444 in 2017. However, it also observes that in 2019 women represented only 5.5 per cent of top managers, 9.3 per cent of middle managers and 23 per cent of basic managers.

The Committee notes the Government's information on the number of women judges in office. In reply to the Committee's previous request, the Government indicates that the exact number of women judges with the right to issue judgments cannot be provided because such data is not collected. In this regard, the Committee notes, from the 2017 report of the Special Rapporteur on the situation of human

rights, that women remain excluded from certain occupations, including from serving as judges who issue rulings, although they may be appointed as assistant judges (A/72/322, paragraph 87). The Committee also notes, from the Government's report on the application of the Employment Policy Convention, 1964 (No. 122), that women's economic participation increased from 12.7 per cent in 2014 to 17.3 per cent in 2016 and an Inclusive Employment Plan under which women are being provided with assistance and support to work from home is being implemented. In this regard, the Committee notes that women account for more than 80 per cent of homeworkers. The Government further indicates that it has provided support for the creation of employment for female rural cooperatives by creating micro-credit units, and it has encouraged rural organizations and cooperatives for economic empowerment and income generation of rural women by facilitating access to production resources, land, capital and ownership rights. The Committee also notes, from the Government's supplementary information, that due to the exceptional economic conditions caused by COVID-19 in 2020, an economic working group has been set up to provide women heads of households with support for production and livelihoods, including by supporting their employment in workshops to produce face masks and gowns. Finally, the Committee notes that the Special Rapporteur regrets that discrimination on the basis of gender pervades society and that the pace of change concerning the protection of women from discrimination is slow (A/75/213, 21 July 2020, paragraph 46), and that discrimination in the job market continues to prohibit women from working in certain professions (A/HRC/37/68, 5 March 2018, paragraph 63). ***In light of the above, the Committee asks the Government to: (i) step up its efforts to examine and address the obstacles that exist in practice, including cultural and stereotypical barriers, to women's equality of opportunity and treatment; (ii) promote and encourage the participation of women in the labour market and decision-making positions on an equal basis with men; and (iii) provide up-to-date statistics disaggregated by sex and occupation in both the public and private sectors, including the number of women judges with the right to issue judgments. Recalling the importance of women's access to the labour market not being restricted to a limited number of jobs and occupations or to being housebound, the Committee asks the Government to: (i) take measures to ensure that women have access to equal opportunities, and provide information on the concrete steps taken or envisaged to this end; (ii) continue providing information on the steps taken to support women's entrepreneurship, including those aimed at disadvantaged groups, rural and nomadic women, and women heads of households; (iii) provide information on the results achieved; and (iv) continue providing information, including statistics, on the number of women and men enrolled as students in universities and vocational and technical training institutions and their fields of study.***

*Discrimination based on religion and ethnicity.* With regard to its previous comments, the Committee notes the Government's statement that recognized minorities are represented by five members of Parliament and are also present in urban and rural councils. The Government indicates that, just like any other citizens, members of religious minorities have access to university. However, the Committee recalls that the practical impact of the Selection Law. which requires prospective state officials and employees to demonstrate allegiance to the state religion *(gozinesh)* remains an issue of concern. It notes, from the 2019 report of the Special Rapporteur on the situation of human rights that, as a result of this practice, religious minorities, in particular non-recognized religious groups, face serious hurdles in obtaining public sector employment, and that private employers have also reportedly followed the guidelines of the *gozinesh* requirements, thereby discriminating against potential non-Muslim employees (A/74/188, 18 July 2019, paragraphs 41 and 42). The Committee recalls that for a number of years it has been raising the issue of the situation of the non-recognized minorities, in particular the Baha'i, and notes that, according to the above report, the Baha'i continue to be excluded from schools and employment (paragraph 50). ***The Committee urges the Government to take the necessary steps to eliminate discrimination in law and practice against members of religious minorities, especially non-recognized religious groups, in education, employment and occupation, and to adopt measures to foster respect and tolerance in society of all religious groups. Once again noting with regret that no information has been provided on the role or action of the Special Adviser to the President for religious and ethnic minority affairs, the Committee asks the Government to provide such information in its next report. The Committee also asks the Government to consider amending or repealing the Selection Law in order to ensure that people from all religions and ethnic backgrounds have equal access to employment and opportunities in both the public and private sectors, as well as to training and educational institutions. Noting the lack of information provided in this regard, the Committee once again asks the Government to provide information on the labour market participation rates of men and women from religious minorities.***

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value.

Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

*Article 3(a). Social dialogue.* The Committee notes that, between 2017 and 2019, the Government organized six tripartite advisory meetings to discuss labour issues. It also notes the adoption and notification in 2019 of Circular No. 46532, based on which all executive departments shall be obliged to take into consideration the opinions of workers' and employers' groups and other non-governmental organizations when adopting or amending circulars and procedures related to business, and invite their representatives to attend the respective meetings. In its supplementary information, the Government indicates that consultative assemblies of women experts and political, social, economic and cultural elites, with a view to direct, transparent and practical dialogue for women, have been held in four provinces. ***The Committee welcomes these initiatives and asks the Government to continue providing information on activities and efforts for cooperation with employers' and workers' organizations to promote the application of the Convention, including through the various tripartite committees.***

*Enforcement.* ***Noting that the Government reiterates its willingness to organize training on international labour standards in conjunction with the International Training Centre in Turin, the Committee trusts that this cooperation will take place in the near future. The Committee once again asks the Government to provide information on the number and nature of the claims and disputes filed relating to employment discrimination, and to indicate the number of these cases based on sex discrimination. It further repeats its request to the Government to provide information on the activities of the Islamic Human Rights Commission, and any complaints submitted to it or to the courts or any other administrative body concerning discrimination in employment and occupation. The Committee once again asks the Government to provide information on awareness-raising, education and capacity-building measures aimed at employers and workers in order to ensure a better understanding of how to identify and address discrimination and to better promote equality in employment and occupation.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Iraq

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)

*Articles 2 and 3. Equality of opportunity and treatment irrespective of race, colour, religious or national extraction*. The Committee previously noted from the report of the United Nations Special Rapporteur on minority issues on her mission to Iraq (27 February–7 March 2016) that ethnic and religious "minorities have long faced discrimination and exclusion from certain labour markets, including employment in government and public sector posts" and that "such exclusion must be addressed, including through implementation of affirmative action policies where necessary, to ensure that Iraqi institutions better reflect the diversity within society". The Committee also noted from this report that a draft diversity protection and anti-discrimination bill and a draft bill on the protection of the rights of religious and ethnic minority groups were under consideration by the Government (A/HRC/34/53/Add.1, 9 January 2017, paragraphs 18 and 75). The Committee asked the Government to provide information on any measures taken to address discrimination faced by ethnic and religious minorities in employment and occupation. The Committee notes that the Government has not provided information on this point in its report. The Committee nevertheless notes that, in its 2019 concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD), expresses concern at the persistence of structural racial discrimination, marginalization and stigmatization against people of African descent, who are "disproportionately affected by poverty and social exclusion and face discrimination in the enjoyment of their rights to an adequate living, education, health, housing and employment". The CERD also expresses concern at the situation of Roma citizens, who "do not hold unified national identity documents, which reportedly exposes them to discrimination, including in access to employment". The Committee further observes that the CERD regrets "the lack of information on the complaints received by the Iraqi High Commission for Human Rights and the domestic courts regarding racial discrimination

(CERD/C/IRQ/CO/22-25, 11 January 2019, paragraphs 27 and 29). In this regard, the Committee wishes to point out that the absence of complaints and legal actions for racial discrimination may reveal a lack of suitable legislation, poor awareness of the legal remedies available, a lack of trust in the judicial system, a fear of reprisals or a lack of will on the part of the authorities to prosecute the perpetrators of such acts" (2012 General Survey on the fundamental Conventions, paragraph 870). ***While recognizing the difficult situation prevailing in the country, the Committee asks the Government to: (i) provide information on the progress made in the adoption of the draft diversity protection and anti-discrimination bill and the draft law on the protection of the rights of religious and ethnic minority groups; (ii) strengthen its efforts and adopt proactive measures to address discrimination against ethnic and religious minority groups; (iii) report on the impact of these measures on increasing these groups' access to employment and occupation; and (iv) provide statistical information, disaggregated by sex, on the employment of ethnic minority groups and the sectors and occupations in which they are employed. The Committee asks the Government to provide information on the number and the nature of complaints, as well as on the grounds relied upon, filed with the courts and other competent bodies, such as the Iraqi High Commission for Human Rights that relate to discrimination based on race, colour, religion and national extraction.***

*General observation of 2018*. Regarding the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

## Ireland

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Irish Congress of Trade Unions (ICTU), received on 31 August 2019.

*Articles 1(1)(a) and 2 of the Convention. Gender discrimination and equality of opportunity and treatment for men and women.* The Committee recalls that article 41(2) of the Constitution provides that "the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved" and that "The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home." In its previous comment, the Committee noted the policy statement of the Irish Human Rights and Equality Commission (IHREC) of June 2018, in which it called for article 41(2) of the Constitution to be rendered gender neutral, refer to "family life" (understood as including a wide range of family relationships and situations in which family members do not live in the same house) and recognize and support care work, including by parents and other persons providing family care. Noting the ongoing constitutional review process, the Committee urged the Government to provide information on the steps taken to ensure that article 41(2) of the Constitution does not encourage, directly or indirectly, stereotypical treatment of women in the context of employment and occupation. It notes the Government's statement in its report that the referendum foreseen on the question was postponed and the matter was referred to a Citizens Assembly, composed of a Chairperson and 99 citizens randomly selected to be broadly representative of the Irish electorate. The Committee welcomes the fact that in February 2020 a large majority of the Citizens Assembly was in favour of the deletion and/or replacement of article 41(2) of the Constitution. It also notes the supplementary information provided by the Government, indicating that subsequent meetings of the

Citizens Assembly have been postponed due to the COVID-19 pandemic, but that it met on-line in July 2020 to consider public submissions. The Government indicates that the situation is being kept under ongoing review and that it is expected that the Assembly will issue a series of recommendations. ***The Committee asks the Government to provide information on the steps taken to implement the recommendations of the Irish Human Rights and Equality Commission, as well as the Citizens Assembly initiative, and to ensure that article 41(2) of the Constitution does not in any way encourage, directly or indirectly, the stereotypical treatment of women in the context of employment and occupation.***

*Article 1(1)(a). Discrimination based on political opinion or social origin.* In its previous comment, the Committee once again urged the Government to take steps to ensure legislative protection against discrimination in employment and occupation based on political opinion and social origin, and to provide information on the measures adopted or envisaged to ensure protection in practice. The Committee once again recalls that, where legal provisions are adopted to give effect to the Convention, they should include at least all of the grounds of discrimination set out in *Article 1(1)(a)* of the Convention. The Committee welcomes the Government's statement that the Department of Justice and Equality has commissioned research on the addition of socio-economic status as a prohibited ground of discrimination in the equality legislation and that the findings of the research are due in the autumn of 2020. The Committee however notes with ***concern*** that, with regard to discrimination based on political opinion, the Government states that there are no further developments envisaged. In this regard, the Committee also notes the ICTU's observations emphasizing that Chapter 6 of the Belfast Agreement (signed on 10 April 1998, also known as "the Good Friday Agreement"), entitled "Rights, Safeguards and Equality of Opportunity", commits the Government of Ireland to take measures to ensure that there is at least equivalent protection of human rights in Ireland as in Northern Ireland. In this regard, the Committee further notes the indication by the ICTU that the anti-discrimination legislation in Northern Ireland includes political opinion as a prohibited ground of discrimination. ***The Committee asks the Government to provide information on the findings of the research commissioned on including socio-economic status as an additional prohibited ground of discrimination in the equality legislation and on the measures taken or envisaged as a result. It once again urges the Government to take steps to ensure formal legislative protection against discrimination in employment and occupation based on political opinion and social origin and to provide information on how protection against discrimination on these two grounds is ensured in practice.***

*Article 1(2). Inherent requirements of the job.* In order to ensure that any exception to the principle of non-discrimination enshrined in the Convention is restricted to the inherent requirements of a particular job, in previous comments the Committee urged the Government to take steps to amend the relevant provisions of section 2 of the Employment Equality Act 1998, as revised, which excludes from the scope of the Act "persons employed in another person's home for the provision of personal services for persons residing in that home where the services affect the private or family life of such persons" (section 2 thereby permits employers of domestic workers to make recruitment decisions on discriminatory grounds). The Committee notes the Government's statement that there have been no further developments in this regard. It is therefore bound to recall once again what may be considered "inherent requirements of the job" and that overly broad exceptions in equality legislation excluding domestic workers from the protection of discrimination in respect of access to employment may lead to discriminatory practices by employers against these workers, contrary to the Convention. The Committee considers that the right to respect for private and family life should not be construed as protecting conduct that infringes the fundamental right to equality of opportunity and treatment in employment and occupation, including conduct consisting of differential treatment of candidates for employment on the basis of any of the grounds covered by *Article 1(1)(a)* of the Convention where this is not justified by the inherent requirements of the particular job (2012 General Survey on fundamental Conventions, paragraph 830). In this regard, the Committee once again wishes to draw the Government's attention to the fact that: (1) no provision in the Convention limits its scope with regard to individuals or branches of activity; and (2) the protection afforded by the Convention includes all aspects of employment and occupation, including access to employment and to particular occupations. ***The Committee once again urges the Government to take steps to amend the relevant parts of section 2 of the Employment Equality Act so as to ensure that any limitations on the right to non-discrimination in all aspects of employment and occupation are*** restricted ***to the inherent requirements of the particular job, as strictly defined.***

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

## Israel

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1965)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Article 2 of the Convention. Application of the principle of the Convention to live-in caregivers.* In its previous comments, the Committee had noted that live-in caregivers were excluded from the applicability

of the Hours of Work and Rest Law, 1951, including the provisions on overtime pay, and requested the Government: (1) to continue its efforts in finding the appropriate solution to ensure that the remuneration of live-in care-work, a female-dominated sector, is not under-evaluated based on gender stereotypes; (2) to identify benchmarks or milestones to mark progress towards achieving the objectives of the Convention in a time-bound manner; and (3) to provide information on any measures taken to raise awareness among the users and beneficiaries of care services of the need to recognize the value of care work. The Committee concluded in reminding the Government of the possibility to avail itself of ILO technical assistance in this regard. The Committee notes the Government's reiteration that there is no discrimination in payment between national and foreign caregivers and lack of information on the issue of the low level of remuneration of this female-dominated sector and its efforts to improve the situation. It also refers to its comments on the application of the Migration for Employment Convention (Revised), 1949 (No. 97) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). ***The Committee again asks the Government : (i) to report on its efforts to ensure that the remuneration of live-in care-work, a female-dominated sector, is not under-evaluated based on gender stereotypes; (ii) to identify benchmarks or milestones to mark progress towards achieving the objectives of the Convention in a time-bound manner; and (iii) to provide information on any measures taken to raise awareness among the users and beneficiaries of care services, and the general public as a whole, of the need to recognize the value of care work. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as the information at its disposal in 2019.

*Article 1(1)(a) of the Convention. Discrimination on the basis of sex, race, colour or national extraction. Foreign live-in caregivers.* The Committee recalls that in its previous comments it noted that, although the decision of the High Court of Justice in *Yolanda Gloten v. the National Labour Court,* HCJ 1678/07, of 29 November 2009, confirmed the exclusion of live-in caregivers, nationals and non-nationals from the applicability of the Hours of Work and Rest Law, 1951, it also concluded that the current legal framework did not offer a proper mechanism suitable for the unique situation of caregivers, as the Court did not consider that the round-the-clock live-in employment of caregivers corresponded to the general framework of protective labour law. The Committee noted that the Gloten Judgment acknowledged that only a small number of local citizens are willing to work as caregivers and that female Israeli care workers in the long-term caregiving sector were mostly employed in part-time jobs through nursing care companies, while foreign caregivers, 80 per cent of whom are women, are required to reside in the homes of their employers and are excluded from live-out arrangements or part-time employment. It further noted that the Government Staff Committee had submitted recommendations to the Ministry of the Economy, which included a proposal to amend the Hours of Work and Rest Law and its regulations concerning overtime pay in order to clarify that live-in caregivers are not excluded from the scope of the Law, with some adaptation to take into consideration the difficulty of supervising their working hours. Consequently, the Committee requested the Government to provide information on: (1) the concrete measures adopted or envisaged within the framework of the gradual approach to the implementation of the recommendations made to the Ministry of the Economy with a view to ensuring that foreign women workers are effectively protected against direct and indirect discrimination on the basis of sex, race, colour or national extraction, in line with the Convention; and (2) any complaints submitted by caregivers to the various authorities, indicating the nature of the complaints and the outcomes. The Committee notes that in its report the Government reiterates that there is no discrimination between national and foreign caregivers, but does not provide information on the measures taken or envisaged to implement progressively the recommendations made by the Government Staff Committee to the Ministry of the Economy, nor on any complaints submitted by women foreign and national caregivers to the various authorities. Noting that a large number of live-in caregivers are foreign women workers, the Committee stresses that the current situation may open the door to segregation in the labour market on the basis of sex, race and colour against migrant women, who are likely to be exposed to both indirect and direct discrimination. ***With regard to indirect discrimination, the Committee asks the Government to: (i) assess whether the exclusion of live-in caregivers from the applicability of the Hours of Work and Rest Law, 1951, disproportionately affects groups sharing protected characteristics, such as sex, race, colour or national extraction; and (ii) provide information on any measures adopted or envisaged to improve the working conditions of live-in caregivers in practice. The Committee reiterates its request for information on any complaints submitted by caregivers that relate to cases of discrimination (including information on the number of complaints, their nature and outcomes). The Committee also refers to its comments on the***

***application of the Migration for Employment Convention (Revised), 1949 (No. 97), and the Equal Remuneration Convention, 1951 (No. 100).***

*Articles 1 and 2. Equality of opportunity and treatment irrespective of race, national extraction or religion.* In its previous comment, the Committee requested the Government to provide information on the measures adopted to promote equality of opportunity and treatment in employment and occupation of the Arab, Druze and Circassian population. The Committee also requested the Government to monitor the impact on the employment of workers from these communities of the provisions of the Basic Law on the Nation State, 2018, regarding the official language and days of rest. The Committee notes that the Government has provided a detailed report on the labour market in Israel in 2019, indicating among other information that: (1) the groups of Arab men and ultra-orthodox Jewish women have joined the labour market in great numbers and their rates of employment are currently close to the average (an employment rate of 76 per cent in 2018 for both groups); (2) improvements are still needed for a better integration in the labour market of Arab women (employment rate 38.2 per cent in 2018); (3) other groups still face low employment rates (including ultra-orthodox Jewish men, immigrants from Ethiopia, people with disabilities, single parents and workers aged 45 and above); and (4) Arab and ultra-orthodox workers are over-represented in lower income employment categories. The Committee also notes that, according to the same report, the Minister of Labour, Social Affairs and Social Services established a public committee for the promotion of employment towards 2030 that set target employment rates for the different population groups for the next decade. ***The Committee asks the Government to provide information on the measures adopted to promote and ensure in practice the integration of Arab, Druze and Circassian workers, men and women, into the labour market, including in higher income categories, and to continue providing statistical data on employment rates disaggregated by sex and population group.***

With regard to the impact of the Basic Law on the Nation State, 2018, the Committee notes the Government's indication that it is a general law aimed at regulating the symbols of the State and is not related to employment. The Government also specifies that the status given to the Arabic language remains unchanged by the Law. The Committee notes that, according to the report provided by the Government on the labour market in Israel in 2019, only around 41 per cent of Arab women consider their command of Hebrew to be good, very good or at native language level, and specifies that their employment rate improves drastically with a higher command of Hebrew. The Committee recalls that discrimination based on national extraction may occur when legislation imposing a State language for employment in public and private sector activities is interpreted and implemented too broadly, and as such disproportionately and adversely affects the employment and occupational opportunities of minority language groups (General Survey of 2012 on fundamental Conventions, paragraph 764). ***The Committee therefore requests the Government to assess whether the implementation in practice of the provisions of the Basic Law on the Nation State, 2018, and particularly section 3 setting Hebrew as the State language and section 11 establishing the Sabbath and Jewish holidays as days of rest in the State, adversely affect the employment and occupational opportunities of certain population groups.***

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

## Italy

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)

The Committee notes the observations of the Italian Confederation of Managers and High-level Professionals (CIDA) communicated with the Government's report.

*Article 1 of the Convention. Discrimination on the basis of sex. Pregnancy and maternity.* In its previous observation, referring to the practice of having workers sign an undated letter of resignation at the time of hiring for future use by employers *(licenziamento in bianco)* and its disproportionate impact on women with children under three years of age, the Committee asked the Government to: (1) step up its efforts to prevent and eliminate all discrimination against women based on pregnancy and maternity; (2) provide information on the implementation of the specific measures adopted under Legislative Decree No. 80/2015 (for the reconciliation of care, work and family life) and under Act No. 81/2017 (for the promotion of flexible new working arrangements for employees in the public and private sectors), and their impact on reducing the incidence of resignations among working women; and (3) provide information on the impact in this respect of the measures implemented under the three-year plan on affirmative action by the public administration. The Committee notes the information provided by the Government in its report on the measures adopted with the aim of facilitating the reconciliation of family and work responsibilities, including the introduction of allowances for nurseries and a special bonus for the birth or the adoption of a child, as well as updated information on the number of resignations and consensual terminations validated by the labour inspectorate in 2017 and 2018, which concerned working mothers in more than 70 per cent of cases. The Committee also notes the Government's indication that

over the same period there was an increase in cases of resignations and consensual terminations concerning working fathers (15 per cent more in 2017 than in 2016, and 49 per cent more in 2018 than in 2017). The Committee notes that, according to the information provided by the Government, the most frequently stated reason for resignation given by workers continues to be the difficulty of reconciling their work and family responsibilities (36 per cent of the cases validated by the labour inspectorate), with workers mentioning, among other obstacles, the costs of child-care support (babysitters or nurseries), lack of access to kindergartens (that is, the unavailability of child-care facilities in numbers sufficient to meet demand) and the absence of grandparents or other family members who could provide help. In this connection, the Committee notes from the 2018 report of the labour inspectorate on the validation of resignations and consensual terminations that, of 2,062 requests for part-time work or other flexible working arrangements made by the workers concerned, only 423 were accepted by the employer. The same report indicates that the vast majority of cases of resignation and consensual termination (76 per cent) are in the tertiary sector, where women are over-represented.

Noting that family responsibilities continue to represent a major barrier for workers, especially women, to engage in the employment of their choice, the Committee wishes to emphasize that measures assisting workers with family responsibilities are essential to the promotion of gender equality in employment and occupation (2012 General Survey on the fundamental Conventions, paragraph 785). In this regard, the Committee notes from the 2017 report on the investigation of national gender equality policies conducted by the Italian Institute of Statistics (INSTAT), that women face greater difficulties in accessing the labour market because of the burden of family responsibilities and the difficulty of reconciling them with their professional life. The INSTAT report indicates that the employment rate of single women is 81.1 per cent, compared with 70.8 per cent for women living with a partner and 56.4 per cent for women with children. The Committee further notes CIDA's indication that reconciling family and work responsibilities remains an obstacle particularly for women managers. It also notes from the website of the National Agency for Active Labour Policies (ANPAL) that an international comparative analysis of national policy development for life–work balance was completed in 2019. ***The Committee therefore once again asks the Government to step up its efforts to prevent and address all discrimination against women based on pregnancy and maternity, in both the private and public sectors, including by adopting measures to promote the reconciliation of work and family responsibilities, ensuring that such measures are available to men and women on an equal footing and encouraging their use by both, and to provide information on the impact of the measures adopted. Noting the adoption on 20 June 2019 of Directive (EU) 2019/1158 of the European Parliament and the Council on work–life balance for parents and carers, the Committee also asks the Government to provide information on the measures taken pursuant to this Directive.***

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

## Jamaica

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)

*Articles 1(b) and 2(2)(a) of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee recalls that it has been pointing out since 1997 that the Employment (Equal Pay for Men and Women) Act of 1975 does not include the concept of "work of equal *value*" as required by the Convention and only requires the payment of equal remuneration for equal work. It further recalls that in section 2(1) of the Act, "equal work" is defined as "work performed for one employer by male and female employees alike in which: (a) the duties, responsibilities or services to be performed are similar or substantially similar in kind, quality and amount; (b) the conditions under which such work is performed are similar or substantially similar; (c) similar or substantially similar qualifications, degrees of skill, effort and responsibility are required; and (d) the differences (if any) between the duties of male and female employees are not of practical importance in relation to terms and conditions of employment or do not occur frequently". The Committee emphasizes that "work of equal *value*" is different from "similar or substantially similar work". Women and men tend to perform different work or are occupationally segregated in the labour market and, frequently, work performed by women (or mainly by women) is undervalued in comparison to work performed by men (or mainly by men). In this regard, the Committee recalls that the concept of "work of equal *value*" is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (General Survey on the fundamental Conventions, 2012, paragraphs 673 and following). The Committee notes the Government's indication that, regardless of gender, under the Act of 1975, all categories of workers receive equal pay for equal work. The Committee also notes from the Government's report to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) that the Employment (Equal Pay for Men and Women) Act of 1975 is currently under review to ensure that it fulfils its objective of guaranteeing equal remuneration for men and women (CEDAW/C/JAM/8, 5 March 2020, paragraph 94).

***Welcoming this information, the Committee urges the Government to take the necessary steps to ensure that, as part of the review of the Employment (Equal Pay for Men and Women) Act of 1975 its equal pay provisions are amended and brought in line with the Convention: (i) by giving full legislative expression to the principle of equal pay for men and women for work of equal value and (ii) by extending the application of this principle beyond the same employer. The Committee asks the Government to provide information on the steps taken to this end.***

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

## Japan

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO) communicated with the Government's report. It further notes the observations of the Japan Business Federation (NIPPON KEIDANREN) received on 29 August 2019.

*Articles 1 and 2 of the Convention. Work of equal value. Legislation*. The Committee recalls that the tripartite committee set up by the Governing Body to examine the representation alleging non-observance of the Convention by the Government of Japan concluded that further measures were needed, in cooperation with workers' and employers' organizations, to promote and ensure equal remuneration for men and women for work of equal *value* in law and practice in accordance with *Article 2* of the Convention. Thus, in its previous comments, the Committee, while welcoming the adoption of the new Law on the Promotion of Women's Participation and Advancement in the Workplace (Law No. 64 of 2015) which entered into force on 1 April 2016, urged the Government: (1) to take immediate and concrete action to ensure the existence of a legislative framework clearly establishing the right to equal remuneration for men and women for work of equal *value*; and (2) to consider requiring additional data on "the ratio of women's pay to men's pay" to be collected under Law No. 64 of 2015 on the Promotion of Women's Participation and Advancement in the Workplace.

As regards the legislative framework, the Committee notes once again the Government's reference in its report to section 4 of the Labour Standards Act, which provides that "an employer shall not engage in discriminatory treatment of a woman as compared to a man with respect to wages by reason of the worker being a woman" and section 119 which provides for penalties in case of violations. Discriminatory treatment with respect to wages is therefore prohibited when it is based solely on the worker being a woman and also on the general assumption that women's average length of continuous employment is shorter than that of men. According to the Government, as long as the payroll system does not allow discrimination in wages between men and women based only on the sex of the worker, it meets the requirements of the Convention. The Government states in addition that this interpretation has been retained since the ratification of the Convention by Japan in 1967. Once again, the Government refers to the following laws: (1) the Equal Employment Opportunity Law No.113 of 1972 (EEOL), as last amended by Law No. 92 of June 1997, which prohibits discrimination on the basis of sex in terms of the assignment, promotion, and training of workers, loans for housing and other such fringe benefits, change in job type and employment status of workers, mandatory retirement age, dismissal and renewal of the labour contract (sections 6, 7 and 8); and (2) Law No. 64 of 2015 on the Promotion of Women's Participation and Advancement in the Workplace under which employers with 301 or more employees have the obligation, among others, to collect and analyse data on the ratio of women and men within the enterprise in areas such as new hires, hours worked, years of service and classification levels. Following the 2019 amendments, Law No. 64 expanded the obligation to employers with over 101 or more employees. The Government further indicates that, as of the end of December 2018, 99.3 per cent of employers with 301 or more full-time employees have developed action plans to foster the full participation of women in the workplace. The Government provides statistics indicating that the ratio of female employees who occupy management positions above the chief class in private enterprises was 8.7 per cent in 2015 and increased to 9.9 per cent in 2018. According to the Government, the wage disparity between men and women has also been narrowing steadily. The ratio of wages of female workers compared to those of men was 73.6 per cent in 2015 and 74.7 per cent in 2017.

The Committee notes that in its observations the NIPPON KEIDANREN indicates that the difference of remuneration between men and women results mainly from the difference of their rank and their length of service. Therefore, it is important to take into consideration that the number of female managers has increased and the disparity based on the length of service has shortened. The Committee also notes that in its observations, the JTUC–RENGO states that the law provides no response in relation to wage disparities between male and female workers based on career track-related management categories, which is a system that permits a gender-based classification system of employment management in which men are viewed as belonging to a main career track and women to a non-career track. It also fails to provide any remedy when an employer is unable to establish rational grounds for occupational gender segregation after prohibiting discrimination based on gender alone. According to the JTUC-RENGO Survey

on Gender Equality in Employment, undertaken in 2017, approximately 40 per cent of both male and female respondents answered that they were doing the same jobs but on different career tracks, and approximately 40 per cent of women working in positions restricted to specific regions indicated that there should be no difference in treatment for the same job despite a different career track. JTUC-RENGO reiterates that, in order to ensure the conformity of the national legislation framework with the core principle of the Convention, section 4 of the Labour Standards Act should clearly state the principle of the Convention.

With regard to the Committee's request to consider adding "the ratio of women's pay to men's pay" as additional data required to be included in the action plans under Law No. 64, the Government indicates that while employers are not required to examine the status of gender disparities in *remuneration*, they are obliged to examine the level of active participation of women in the workplace, including the differences between men and women in the ratio of management-level employees and length of service, as these elements are considered to be the principal factors of the wage disparity between men and women. According to the Government, such measures will contribute with time to the elimination of horizontal and vertical occupational gender segregation. Regarding the 2019 amendments of Law No. 64, expanding the obligation to collect and analyse data on the ratio of women and men within the enterprise in areas such as new hires, hours worked, years of service and classification levels to employers with 101 or more employees, the JTUC-RENGO considers that the obligation to report on the ratio of female workers should be expanded to small and medium enterprises (SMEs), given that more than 99 per cent of Japanese companies are SMEs, and that the employees of these companies account for approximately 70 per cent of all Japanese workers.

The Committee is bound once again to repeat that the protection against wage discrimination in section 4 of the Labour Standards Act is too limited because it does not capture fully the principle of the Convention, as it does not refer to the element of equal remuneration between men and women for work of equal *value* which is crucial for an effective application of the Convention. The Committee also recalls that the Equal Employment Opportunity Act, prohibits discrimination in a number of areas such as recruitment, appointment and promotion, but does not directly deal with equal remuneration between men and women for work of equal *value*. The Committee wishes to highlight once again that the concept of work of equal *value* lies at the heart of the Convention. It permits a broad scope of comparison, including but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature which is nevertheless of equal v*alue* (see General Survey on fundamental Conventions, 2012, para. 673). It follows that the jobs to be compared on the basis of objective factors (such as skills, efforts, responsibilities, conditions of work, etc.) may involve different types of skills, responsibilities or conditions of work that can nevertheless be of equal *value* in its totality. As such, the principle of the Convention is not equivalent to the principle of non-discrimination as enshrined in section 4 of the Labour Standards Act, which does not encompass the concept of "work of equal *value*". ***The Committee therefore once again urges the Government to take the necessary measures to amend the current legislation with a view to giving full expression to the principle of equal remuneration between men and women for work of equal value enshrined in the Convention. It also reiterates its request to the Government to consider adding the ratio of women's level of remuneration to men's as additional data required to be collected by enterprises under the Act on Promotion of Women's Participation and Advancement in the Workplace, as this information could be used as a warning tool by employers to investigate potential wage discrimination. Please provide detailed information on the activities of the labour inspectorate relating to the promotion and application of the principle of equal pay for men and women, as well as on any court decisions regarding wage discrimination under section 4 of the Labour Standards Act that give effect to the Convention's principle.***

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

## Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1995)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Special measures to address the impact of COVID-19*. In its supplementary information, the Government indicates that a special financial subsidy was put in place to support work and family-life balance in response to COVID-19, particularly applicable to workers affected by school closures. The subsidy is provided when employers allow workers who are guardians of children to take paid leave (excluding statutory annual paid leave) during the temporary closure of elementary schools or other facilities. According to the Government, from April 2020 onwards, an amount equivalent to the regular wages paid to the workers, up to 15,000 Yen (US$ 142) a day, is provided to small and medium enterprises SMEs. Moreover, workers in SMEs are also entitled to paid leave for family care. According to the Government if

the total number of days of leave taken by a worker - who needs to take care of his/her family - is of 5 or more but less than 10, an amount of 200,000 Yen (US$ 1890) will be provided, while 350,000 Yen (US$ 3310) will be provided if the total number of days of leave taken per worker is 10 or more. The Committee notes that this measure is applicable for leave taken between April 1, 2020 and December 31, 2020.

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC–RENGO) communicated with the Government's report. It also notes the observations of the Japan Business Federation (NIPPON KEIDANREN) received on 29 August 2019.

*Article 2 of the Convention. Application to all categories of workers. Non-regular employees*. In its previous comments, the Committee asked the Government to step up its efforts to ensure the effective application of the Convention to non-regular employees, such as fixed-term contract, part-time and dispatched workers in both the private and public sectors. The Government indicates in its report that, the Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members Act (Childcare and Family Care Leave Act) was amended by Law No.14 of 2017. The amendments allow fixed-term employees to take childcare leave, provided that: (1) the employee has been employed by the same employer continuously for a year or longer at the time of submitting the request for child care leave; and (2) it is unclear whether the employment contract (or the renewed employment contract) will end/expire before the child reaches one year and six months of age. The amendments also allow fixed-term employees to take family care leave, on condition that: (1) the employee has been employed by the same employer continuously for a year or longer, at the time of submitting the request for family care leave; and (2) it is unclear whether the employment contract (or the renewed employment contract) will end/expire six months after the expiration of 93 days from the starting date of the caregiver leave.

According to the Government, a leaflet entitled "Fixed-term Employees who are Eligible for Childcare and Family Care Leave" has been prepared in 2018, as part of the awareness raising campaign on the 2017 amendments. As regards statistical information, the Government indicates that: (1) there is no statistical information on the rate of family leave taken by fixed term workers; (2) the rate of childcare leave taken in 2017 by fixed-term workers was 7.5 per cent for male and 93 per cent for female workers; (3) in 2017, 242 part-time public service workers at the national level took childcare leave, including seven male and 234 female workers; (4) in the same year, 36 part-time public service workers took family leave (4 male and 32 female employees).

The Committee notes the observations of JTUC-RENGO stating that: (1) among women who were in a regular employment relationship prior to pregnancy, only 62.2 per cent are still in a regular employment relationship by the time their first child has reached the age of one and that the proportion of these women who took childcare was 54.7 per cent; and that (2) during the debate leading up to the 2017 amendments, JTUC-RENGO submitted that the conditions placed on taking leave for workers on fixed-term contracts should be abolished, and as a result, some of them (such as the need to show the probability of renewing the employment contract) were relaxed.

The Committee welcomes the legislative efforts undertaken by the Government to enhance the application of the Convention to all workers irrespective of their contractual status. However, it notes from the above statistical information that the rate at which childcare leave taken in 2017 by fixed-term workers is significantly disproportionate between men and women and between regular and non-regular workers. ***Recalling that the Convention applies to all categories of workers and all branches of economic activity, the Committee urges the Government to ensure that the Convention applies in practice to all categories of workers, in particular to non-regular employees and to provide information on the measures taken in this regard and their impact. The Committee also asks the Government to take the necessary measures to raise awareness among fixed-term workers about the 2017 amendments of the Childcare and Family Leave Act. Lastly, it asks the Government to continue to provide statistical information disaggregated by sex on the number of non-regular workers requesting and receiving childcare and family care leave in the private and public sectors.***

*Article 4(a). Organization of work. Long working hours*. The Committee previously asked the Government to step up its efforts to reduce annual working hours in order to enable men and women with family responsibilities to enter and remain in the labour market. The Committee notes with ***interest*** the adoption in 2018 of the "Work Style Reform legislation" which bundles together amendments to eight laws, including the Employment Measures Act No.132 of 1966, the Labour Standards Act No.49 of 1947, and the Working Hours Arrangements Improvement Act No. 90 of 1992 to tackle *inter alia* the "*karoshi*" (death by overwork) phenomenon. The Act requires employers to implement specific measures to limit employees' working hours, to ensure that employees take annual leave, and thus create a healthier and more flexible work environment. Concerning overtime, the new law contains among other measures, two rules that set maximum limits on overtime hours: (1) the Basic Limit Rule, which says that overtime hours cannot exceed 45 hours per month or 360 hours per year; and (2) the Extended Limit Rule, which allows employers to extend the basic limit under special circumstances (e.g. an exceptionally busy period, and an unexpected volume of customer complaints or a sudden change in product expectations). The

extended limit cannot exceed 100 hours per month and 720 hours per year; and employees may not work, on average, more than 80 hours of overtime per month. The number of months in which the worker works over the Basic Limit cannot exceed six months in a year. Firms that violate these limits face a penalty of up to JPY300 000 (US$2 660) per worker. The Committee notes that highly skilled professional workers may be exempt from the new overtime provisions, and that, because labour shortage in Japan is more severe in certain sectors than in others, the following occupations will be exempt from this law for five years: car drivers, construction workers, doctors, and employees engaged in the research and development of new technology. The Ministry of Health, Labour and Welfare (MHLW) has set different compliance deadlines ranging from April 1, 2019 to April 1, 2023 for different requirements of the Act to give employers sufficient time to amend their work rules and put compliance mechanisms in place depending on the size of the company. In addition to overtime work limits, the Act requires workers who are entitled to at least 10 days of annual leave to take at least five of these days each year. If an employee does not voluntarily choose to use these days, it becomes the employer's responsibility to designate the timing in which the leave must be taken. Moreover, the Guidelines for Review of Working Hours (Guidelines for Improvement of Working Hours Arrangement) were revised to encourage the introduction of the interval system between shifts in response to enforcement of the "Work Style Reform Legislation".

The Committee notes the observations of NIPPON KEIDANREN indicating that the limit of overtime work has been agreed with the trade unions and awareness measures have been taken to promote the take up of paid leave and compliance with the revised laws on working hours. The Government further indicates that in 2017, inspections were carried out to 25,676 workplaces, and among them 11,592 workplaces received guidance for correction and improvement of illegal overtime work.

The Committee welcomes the Government's efforts to change Japan's long working-hour culture, which is a major obstacle to the effective implementation of the Convention. ***The Committee asks the Government to take proactive measures to ensure the effective application of the "Work Style Reform Legislation" to all workers. The Committee also asks the Government to provide information on the measures taken or envisaged to: (i) strictly enforce overtime work limits introduced in 2019-20; (ii) closely monitor the scheme that exempts skilled professional workers from overtime regulation to avoid excessive working hours; and (iii) introduce a minimum limit on the interval of time between the end of one work day and the beginning of the next work day. The Committee asks the Government to provide statistical information on the number of cases where penalties have been imposed on companies that do not comply with the maximum limits on overtime hours as well as the number of workers affected by the violations, and the amount of penalties imposed.***

*Articles 4(b) and 5. Childcare and Family leave and facilities*. The Committee notes that the 2017 legislative amendments to the Childcare and Family Care Leave Act have also introduced a set of new leave entitlements for both regular and non-regular workers. The latter are now entitled to request an extension of the period of childcare leave until the child reaches two years of age, if the child cannot attend kindergarten. In this regard, a series of initiatives to improve the childcare leave take-up by male workers have been taken, including: (1) the development of a system in which male workers are able to take childcare leave again in cases where they had taken it within eight weeks from the childbirth; (2) the possibility of using the family care leave in a whole or up to three different periods, and (3) the provision of subsidies for companies that encourage male workers to take childcare leave. The Government indicates that, in 2017 the percentage rate of workers who took childcare leave reached 5.14 per cent for male workers, and 83.2 per cent for female workers; whereas, in 2014, this rate was 5.2 per cent and 25.3 per cent respectively. In 2014, the rate of workers who used family care leave reached 1.2 per cent for female workers and 1.1 per cent for male workers; whereas this rate was 2.4 per cent and 3.1 per cent respectively in 2017. Moreover, the number of local public service employees in full-time work who took childcare leave in 2017 was 46,207 (2,750 male and 43,457 female employees), while the number of those who took family care leave in the same year was 2,816 (819 male and 1,997 female employees). The Committee notes that in its observations, JTUC–RENGO expressed concern about the fact that the vast majority of workers who take childcare leave are women and that, such a situation will lead to a reversal of promotion of women's participation. It adds that there is still only a small proportion of men taking childcare leave compared to women, with a rate of 82.2 per cent for women compared to 6.16 per cent for men. This is mainly due to the issue of the number of children waiting to enter authorized day care facilities. JTUC–RENGO indicates that despite the government's plans to expand childcare facilities: in April 2018, 19,895 children were on waiting lists for nursery centres [....]. The major cause of such a situation is the shortage of childcare and nursing workers and their level of remuneration which is lower than the average remuneration for workers in other sectors (around 110,000 yen (900 $US) per month). Although an increase to 3,000 yen (2000 $US) per month was decided in April 2019 following the adoption of the New Economic Policy Package ("the Package"), such a measure is not going to be sufficient to eliminate disparity in wages. JTUC-RENGO recalls that, the Government is required to implement effective policies to quickly resolve the issue of children on day care waiting lists and promote the use of childcare leave by men by providing sufficient quality nursery centres. Referring to the 2017 Ministry of Internal Affairs and Communications' Employment Status Survey, JTUC-RENGO states that 3 million out of the 59.21 million

employees in Japan engage in nursing care while working. Of those people, men account for 1.27 million, whereas women account for 1.73 million. Regarding family leave services, JTUC–RENGO expresses the view that, to respond to the needs of an extremely aging population, it is important to balance both work and nursing care and expand leave and time off for nursing care.

In its reply, the Government indicates that it has adopted a number of measures to enhance the establishment of childcare facilities, among them the adoption of: (1) the "New Economic Policy Package" aiming at encouraging people who are engaging in nursing care activities through a pay rise equivalent to 3,000 yen per month; (2) the implementation of the "Acceleration Plan for Elimination of Waiting Children" under which 535,000 childcare facilities were created in 2017; (3) the "Plan for Raising Children with Peace of Mind" adopted in June 2017, under which 320,000 childcare facilities are going to be created by the end of 2020; and (4) the "Comprehensive After-school Plan for Children" which aims at creating additional capacity for about 250,000 children for the period of 2019 to 2021. According to the Government, as of April 2018, 27,916 childcare places were created, and 2,505 children were enrolled. Moreover, in order to enhance the after-school facilities, additional capacity for about 300,000 children spaces will be secured by the end of 2023.

In light of the above, the Committee welcomes the Government's effort to promote greater work-life balance by expanding the leave entitlements to both regular and non-regular workers and enabling a better share of parental leave and family leave, particularly for men. However, it notes that, in practice: (i) women end up taking the majority of these leaves; (ii) a majority of women withdraw from the labour market after the birth of their first child; and (iii) women only enter the labour market once their children have grown up and the burden of bringing up children is reduced, and often then only as non-regular workers in order to be able to take care of ageing parents. Further, the Committee notes that, although the Government had promised to eliminate the lengthy waiting lists for authorized day care centres by 2018, it had to postpone the achievement of this goal to March 2021, and notes that it is a phenomenon compounded by the shortage of childcare workers and the cost of such services. In this regard, it recalls that the lack of quality, affordable care services has been identified by both men and women as one of the biggest challenges for women with family responsibilities who are in paid work, as well as the inflexibility of the hours of care of these services. Referring to its 2019 general observation, the Committee wishes to highlight that it is essential that workers with family responsibilities have access to child and family care facilities meeting the needs of children of different ages, after school care, care for the disabled, and elderly care, that are affordable, accessible to their home and work, responsive to working hours, and provide quality care. ***The Committee therefore urges the Government to continue to take proactive measures to address effectively: (i) issues that discourage the employment of women; (ii) gender stereotypes, so that more men are encouraged to effectively avail themselves of the new childcare and family care leaves; and (iii) the lack of opportunities/incentives for women to join and remain in the labour market. It also requests the Government to report on the progress made towards reaching the objective of the elimination of waiting lists to facilitate the enrolment of children in day care centres by March 2021 and the measures taken to extend coverage of care services and facilities for other dependent members of the family, as well as the results achieved. The Committee asks the Government to provide statistical information, disaggregated by sex and categories of workers (regular, non-regular) on the extent to which men and women workers make use of the leave entitlements following the amendments of the relevant provisions of the Childcare and Family Care Leave Act No.14.***

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

## Jordan

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1966)

*Article 1(a) of the Convention. Additional allowances in the public service.* The Committee recalls that section 25(b) of Regulation No. 82 of 2013 concerning the Civil Service provides that a family allowance is granted to a married man and in exceptional cases to a woman (if her husband is incapacitated, or if she supports her children or is divorced and does not receive a child allowance for her children below 18 years of age), which constitutes direct discrimination with respect to remuneration contrary to the Convention (see the General Survey on the fundamental Conventions, 2012, paragraph 693). The Committee notes the Government's indication, in its report, that the family allowance does not discriminate on the basis of sex but is paid to the "breadwinner" of the family, whether male or female. In that regard, it wishes to point out to the possibility of allowing both spouses to choose who would benefit from such allowances, rather than starting from the principle that they should systematically be paid to the main "breadwinner", and only in exceptional situations to the other spouse. ***The Committee recalls that it has been raising this issue since 2001, and it asks the Government to clarify whether the wording of section 25(b) of Regulation No. 82 of 2013, expressly grants the family allowance to the main "breadwinner", whether male or female. If the provision presumes that the man is the "breadwinner" and that women are entitled to the family allowance in exceptional circumstances only, the Committee urges the Government to take steps***

***without delay to amend the Regulation and to ensure that women and men are entitled to all allowances, including the family allowance, on an equal basis. The Government is asked to provide a copy of Regulation No. 82 of 2013.***

*Article 1(b). Equal remuneration for work of equal value. Legislation.* Since 2001, the Committee has been drawing the Government's attention to the need to give full legislative expression to the principle of equal remuneration for men and women for work of equal *value*. It previously welcomed the recommendations of the legal review undertaken by the National Steering Committee for Pay Equity (NSCPE) and the July 2013 workshop to amend the provisions of the Labour Code of 1996, and its related Interim Act of 2010, recommending equal remuneration for men and women for work of equal *value* - "including work of a different type", and made reference to the use of objective job evaluation methods to determine whether jobs are of equal *value*. The Committee notes the Government's statement that section 2 of the Labour Code has been amended to include the concept of wage discrimination based on sex. The Government indicates that a penalty of up to 1,500 Jordanian dinars (JOD) can be imposed for violations of the provision. The Committee notes with ***satisfaction*** that section 2 of the Labour Code (Amendments) Act No. 14, 2019, defines non-discrimination in relation to wages as the application of the principle of equal remuneration for work of equal *value* regardless of gender. ***The Committee requests the government: (i) to provide information on the application of section 2 of the Labour Code (Amendments) Act No. 14, 2019, in practice, including on the number and nature of violations found by the labour inspectors; and (ii) to indicate how it is ensured that it permits a broad comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)

*Article 1(1)(a) of the Convention. Protection of workers against discrimination. Legislation.* The Committee previously asked the Government to provide information on the steps taken to implement the recommendations of the legal review of the National Steering Committee for Pay Equity (NSCPE) as they relate to the Convention with a view to explicitly defining and prohibiting direct and indirect discrimination based on at least all the grounds enumerated in *Article 1(1)(a)* of the Convention in all areas of employment and occupation, and covering all workers. The Committee recalls that there is no provision in Labour Law No. 8 of 1996 explicitly defining and prohibiting direct and indirect discrimination based on all the grounds enumerated in *Article 1(1)(a)* of the Convention. Noting that the report does not provide information in this regard, the Committee wishes to recall that, when legal provisions are adopted to give effect to the principle of the Convention they must include, as a minimum, all the grounds of discrimination listed in *Article 1(1)(a)* of the Convention (2012 General Survey on the fundamental Conventions, paragraph 853). ***The Committee therefore urges the Government to take the necessary measures without delay to amend the Labour Law No. 8, 1996, in order to: (i) prohibit direct and indirect discrimination on at least all of the grounds enumerated in Article 1(1)(a) of the Convention with respect to all aspects of employment and occupation; and (ii) cover all categories of workers, in both the formal and informal economies, including domestic workers. The Committee also asks the Government to provide information on any progress made in this regard.***

*Article 1(1)(a). Discrimination based on sex. Sexual harassment.* Regarding the adoption of a definition and prohibition of both quid pro quo and hostile environment sexual harassment, the Committees notes the Government's indication in its report that in 2019 a guide to raise awareness of sexual harassment in the workplace was developed by the social partners and the labour inspectorate. The guide includes a definition of violence and sexual harassment in the workplace, indicates the forms that they can take and the mechanisms for dealing with them, in particular by employers, with emphasis on the employer's responsibility to provide a safe and adequate work environment. The Government also refers to: (1) the preparation and adoption of a guiding policy relating to protection against violence and harassment in the world of work under which employers undertake to provide a safe and healthy work environment that is free from all forms of violence, threats of violence, discrimination, harassment, intimidation and any other abusive behaviour; and (2) the introduction of a special clause into enterprise rules requiring them to adopt a policy on protection against violence and harassment in the world of work, in the absence of which the internal rules will not be validated by the labour inspectorate. The Committee notes that section 28(i) of the Labour Law provides that the employer may discharge the employee without notice if the employee physically assaults or humiliates the employer, the manager in charge, one of his superiors, any employees or any other person during work. Section 29(f) also provides that the employee may leave work without notice and still retain "his" legal rights for the termination of service as well as damage compensation if the employer or his or her representative physically or verbally assaults him or her during work. The Committee wishes to draw the Government's attention to the importance of using gender-neutral terminology to avoid perpetuating stereotypes. It further notes that sections 296 to 299 of the Penal Code (Law No. 16 of 1960) establish a penalty of imprisonment in the event of "sexual assault",

"indecent flirting or behaviour" offences, "immoral conduct" and "immoral conduct in public places", but do not provide a clear definition of sexual harassment. The Committee further notes the Government's indication that the National Committee on Women's Affairs is working on a number of amendments to the Labour Law aiming to introduce an obligation on employers to develop an anti-harassment policy at the workplace. In the absence of a comprehensive definition and prohibition of sexual harassment in the Labour Law, the Committee recalls the importance of taking effective measures to prevent and prohibit sexual harassment in employment and occupation (2012 General Survey, paragraph 789). ***The Committee therefore asks the Government to: (i) step up its efforts to ensure that a comprehensive definition and a clear prohibition of both forms of sexual harassment in employment and occupation (quid pro quo and hostile work environment) is included in the Labour Law and to ensure the use of gender-neutral language; (ii) continue taking preventive measures, including awareness-raising initiatives on sexual harassment in employment and occupation and on the social stigma attached to the issue, for workers, employers and their respective organizations, as well as law enforcement officials, specifying the procedures and remedies available; and (iii) provide information on the number, nature and outcome of any complaints or cases of sexual harassment in employment and occupation detected by labour inspectors and dealt with by the courts or any other body.***

*Article 5. Special protection measures. Restrictions on women's employment.* The Committee previously asked the Government to take the opportunity of the ongoing legislative review process to amend section 69 of the Labour Law and Ordinance No. 6828 of 1 December 2010 to ensure that any restrictions on women's employment are limited to maternity in the strict sense, and are not based on stereotypical perceptions of the capabilities of women and their appropriate role in society, which would be contrary to the Convention and constitute obstacles to the recruitment and employment of women. The Government indicates that a Bill amending the Labour Law, including section 69, was submitted to the Chamber of Deputies for adoption and that it is still before Parliament. ***The Committee asks the Government to review its approach to restrictions on women's employment and to take the necessary steps to ensure that section 69 of the Labour Code and the corresponding Ordinance No. 6828 are modified so that any restrictions on the work that can be done by women are limited to maternity protection in the strict sense, and are not based on stereotypical assumptions regarding their capacity and role in society. It asks the Government to provide information on any progress made in this regard.***

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

## Kazakhstan

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

*Articles 1 and 2. Gender pay gap.* The Committee previously asked the Government to provide detailed information on the measures taken or envisaged in order to: (1) reduce the significant gender pay gap; and (2) improve the access of women to a wider range of job opportunities including into higher-level and higher-paid occupations, as well as in sectors in which they are currently absent or under-represented, with a view to reducing inequalities in remuneration that exist between men and women in the labour market. The Committee further asked the Government to provide detailed and up-to-date comparable statistics on earnings of women and men, including sex-disaggregated data by industry and occupational category. The Committee notes the information according to which in 2019: (1) a worker's nominal average monthly remuneration was 186,800 tenge (KZT); (2) for men, the figure was KZT222,500 while for women it amounted to KZT150,800 – that is to, women's remuneration was 67.7 per cent of men's; and (3) where the work has the same characteristics in terms of qualifications and place of work, men and women's remuneration is the same. The Committee also notes the numerous statistical information provided by type of economic activity concerning, amongst other thing: the number of employees, their wage, the index of average monthly wages and real wages, the number of employees and their wages by region, the average monthly salary and real wage index by regions, the average monthly salary and number of employees in the industry by type of economic activity, etc. Finally, the Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in its 2019 concluding observations, expressed concern that the significant gender pay gap (34 per cent) and the horizontal and vertical segregation in the labour market impede the full achievement of equality at work (doc. CEDAW/C/KAZ/CO/5, 12 November 2019 para. 37(b)). The Committee notes the detailed information provided by the Government, all pointing to the fact that the gender pay gap in the country is still significant***. The Committee reiterates therefore its request to the Government for detailed information on the concrete measures taken to improve the access of women to a wider range of job opportunities including into higher-level and higher-paid occupations, as well as in sectors in which they are currently absent or under-represented, in particular in industrial sectors where wages are higher than the national average, such as oil and gas, mining and processing, transport and construction, etc.***

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

The Committee takes note of the supplementary information provided by the Government in the light of the decision taken by the Governing Body at its 338th Session (June 2020). The Committee reviewed the implementation of the Convention on the basis on the additional information received from the Government this year, as well as the information available to it in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 30 September 2020, on the persistence of gender stereotypes, the definition of discrimination in national law and prohibited grounds of discrimination, gaps in protection against discrimination and enforcement, discrimination in job advertisements, cases of victimization and workplace violence. ***The Committee requests the Government to provide its comments in this regard.***

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination.* In its previous comment, the Committee requested the Government to: (1) indicate the reasons for the omission of the ground of colour during the revision of the legislation and take the opportunity of any future revision of the Labour Code of 2015 to include colour as a prohibited ground of discrimination in section 6(2); and (2) provide detailed information on the measures taken to ensure effective protection in practice against discrimination based on the grounds enumerated in the Convention, including colour. In its report, the Government indicates that the Ministry of Labour and Social Protection (MTPS) works continuously to improve the labour legislation. ***The Committee trusts that the Government will take the opportunity of a forthcoming revision of the Labour Code to include the ground of colour in the list of grounds of discrimination that are explicitly prohibited by law. In the meantime, it requests the Government to provide detailed information on the measures taken to ensure in practice effective protection against discrimination based on the grounds listed in the Convention, including colour.***

*Article 2. Equality of opportunity and treatment for men and women.* In its previous comment, the Committee urged the Government to provide: (1) detailed information on the measures taken to promote and ensure in practice equality of opportunity and treatment for men and women in employment and occupation in a wide range of jobs, including high-level jobs and those with career prospects, and (2) information on the distribution of women and men in the various vocational training courses and in education. The Committee notes the information provided by the Government, which indicates the measures taken with regard to women, in particular the number of women as of 1 September 2020 who have benefited from programmes, short courses and loans to start their own businesses. The Committee also notes that the United Nations Committee for the Elimination of Discrimination Against Women (CEDAW) in its concluding observations of 2019 welcomes: (1) the increased representation of women in the judiciary and at different levels of the executive branch and the increased participation of women in political parties; and (2) the progress achieved in promoting access for women to employment. The Committee notes that, according to the information provided to CEDAW, the Government has drawn up a second action plan on family policy and gender equality 2020–2022. The Committee further notes that, according to the CEDAW, this new action plan should refocus the conceptual framework of the State on the promotion and empowerment of women and the implementation of a strong gender equality policy. However, the Committee notes the concerns expressed by the CEDAW with regard to: (1) the postponement to 2030 of the full realization of the goal of 30 per cent representation of women in decision-making posts; (2) the under-representation of women at the ministerial level, in the foreign service, in the armed forces and in local administrations; (3) the low representation of women in the Senate (10.6 per cent), which is presided over by a woman, and at the head of local representative bodies *(maslikhat)*; (4) the low representation of women in the governing bodies of political parties; (5) the lack of disaggregated data on the political participation of women; (6) regional discrepancies in the political representation of women; (7) discriminatory gender stereotypes hindering the participation of women in political and public life; (8) the reports of discrimination in employment and sexual harassment in the workplace, exacerbated by persistent gender stereotypes; (9) the concentration of women in traditional and low-paid sectors of the economy and a glass ceiling that precludes most women from reaching senior management positions; and (10) the limited access to employment and social security schemes for disadvantaged groups of women, such as migrant women, women domestic workers, rural women and women with disabilities (CEDAW/C/KAZ/CO/5, 12 November 2019, paragraphs 29 and 37). Furthermore, the Committee recalls that it previously noted the Law of 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women and the Strategy for Gender Equality 2006–16, the objectives of which include the equal representation of women and men in executive and legislative bodies and in decision-making positions, the expansion of women's entrepreneurship and the increase of women's competitiveness in the labour market. ***The Committee once again asks the Government to: (i) provide information, including statistics disaggregated by sex, on the impact of the measures taken, particularly in the framework of the Law of 2009 on State Guarantees, in promoting and ensuring in practice equality of opportunity and treatment for men and women in employment and occupation in a wide range of occupations, including high-level jobs and those with career prospects; and (ii) provide information on***

***the distribution of men and women in the various vocational training programmes and in education. Lastly, the Committee requests the Government to indicate the measures taken or envisaged in the framework of the second action plan 2020–22 to implement the principle of equality of opportunity and treatment for men and women enshrined in the Convention.***

*Equality of opportunity and treatment for national, ethnic and religious minorities.* In its previous comment, the Committee urged the Government to: (1) provide information on the conditions of access of national, ethnic and religious minorities to the public service, and particularly the linguistic requirements, and (2) take the necessary steps to collect and analyse data, disaggregated by branch of activity and occupation, on the distribution of men and women belonging to the various minorities in the public and private sectors, as well as their participation at different levels of vocational training and education. Noting with ***regret*** that the Government's report does not contain a specific reply to the questions raised previously, the Committee is bound to repeat its request. ***The Committee once again urges the Government to: (i) provide information on the measures taken with regard to the conditions of access of national, ethnic and religious minorities to the public service, and particularly the linguistic requirements; and (ii) take the necessary measures to collect and analyse data, disaggregated by sector and occupation, illustrating the distribution of men and women belonging to various minorities in the public and private sectors, as well as their participation in the various levels of vocational training and education.***

*Articles 2 and 3. National equality policy.* The Committee notes the following progress welcomed by the CEDAW: (1) the adoption in 2019 of the National plan for the period up to 2025 to ensure the rights and improve the livelihoods of persons with disabilities; (2) the Forum for rural women to promote, amongst other things, entrepreneurship by women, held in 2018; and (3) the implementation of the "Women in Business" programme, conducted jointly with the European Bank for Reconstruction and Development, which is focused on providing concessional credit to businesses run by women (CEDAW/C/KAZ/CO/5, 12 November 2019, paragraph 5). ***The Committee requests the Government to provide information on the specific measures taken to implement these various programmes, the impact of these measures on the professional situation of people with disabilities and rural women and the development of female entrepreneurship.***

*Article 5. Special protection measures. Restrictions on the employment of women.* In its previous comment, while noting the Government's wish to protect women's health and safety, the Committee urged the Government to: (1) take the necessary measures to guarantee equality of opportunity and equal protection in terms of health and safety for men and women, and to review the list of occupations prohibited for women that is currently in force so that measures to protect women in employment are limited to the protection of maternity in the strict sense of the term and do not reflect gender stereotypes about the capacities and role of women in society and in the family; and (2) provide information on the measures taken to consult workers' organizations and employers and the results of such consultations. The Committee notes the Government's indication that the MTPS has updated the list of jobs that women cannot do with the aim of bringing it into line with contemporary working conditions, which have improved in a significant number of workplaces in order to guarantee them access to jobs that are not a threat to their health as a result of automation and the introduction of technology. The Government adds that this list of jobs has been reduced by 33 per cent and will continue to be shortened and updated as scientific and technical progress is made. The Committee welcomes the Government's efforts to gradually reduce the list of jobs prohibited for women. ***The Committee requests the Government to indicate to what extent the social partners are consulted during the process of revising the list, and to provide a copy of the revised list. The Government is requested to provide information on the jobs that are now open to women and to specify whether the removal of prohibitions on jobs to which women have access has been covered by information campaigns.***

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

## Republic of Korea

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the Federation of Korean Trade Unions (FKTU), communicated with the Government's report, as well as the observations of the Korean Confederation of Trade Unions (KCTU) received on 20 September 2019. It further notes the observations of the KCTU communicated with the Government's supplementary information, as well as the comments of the Government on those observations.

*Articles 1 and 2 of the Convention. Legislation.* The Committee recalls that section 8(1) of the Equal Employment Opportunity and Work–Family Balance Assistance Act (previously referred to as the "Act on Equal Employment and Support for Work–Family Reconciliation") only provides for equal wages for work

of equal value "in the same business" and that the Equal Treatment Regulation (No. 422) limits the possibility of comparing work performed by men and women to "work of a similar nature". In its last comment, in light of the persistent and high gender pay gap, the Committee urged the Government once again to take the necessary steps to bring the above-mentioned Act and Regulation into full conformity with the Convention. It also asked the Government to continue to provide statistical information on the gender pay gap. In its report, the Government recalls that: (1) since its enactment in 1997, the Regulations on Handling Work related to Equal Employment Opportunity (No. 117) have specified that two jobs which are somewhat different but are recognized as of equal value in essence according to job evaluation constitute "work of equal value"; (2) in 2013, the concept of "work of similar value" was added to the Regulations to provide a clearer standard for equal pay for work of equal value (according to article 4.1 of these Regulations, work of equal *value* refers to comparable jobs done by men and women which are of "equal or similar" value in terms of required skills, efforts, responsibilities, working conditions, etc.); and that (3) additionally, in 2019, the scope of application of the "provision on prohibition of wage discrimination on grounds of gender" was expanded from workplaces with five employees and more to all workplaces.

The Committee notes that, on 14 March 2019, the Korean Supreme Court held that there must be no "unreasonable" discriminatory treatment based on other circumstances that are not related to work, as well as a prohibition on wage discrimination based on social status or gender under the Labour Standards Act and the Equal Employment Opportunity and Work–Family Balance Assistance Act (Case 2015 Du 46321). In that case, the Supreme Court ruled that paying different lecture fees to full-time lecturers and to part-time lecturers constitutes "unreasonable" discrimination for a circumstance that is not related to work, and is in violation of the principles of "equal treatment and equal pay for equal work", and thus, are invalid. While welcoming this decision, the Committee notes that the principle of equal pay for equal work upheld by the Court is narrower than the principle laid down in the Convention, as it does not give expression to the concept of equal pay for work of equal "value", within the meaning of *Article 1* of the Convention. While noting the various initiatives undertaken by the Government to promote the principle of equal remuneration between men and women workers and to reduce occupational segregation, the Committee wishes to point out that, where legislation forms part of a comprehensive approach toward the elimination of gender-based salary discrimination, it is crucial that such legislation be effective and ensure the application of the principle of equal remuneration for men and women workers for work of equal value, within the meaning of *Article 1* of the Convention. ***The Committee urges the Government to ensure that its legal framework does not only provide for equal remuneration for equal, the same or similar work, but also address situations where men and women perform different work that is nevertheless of equal value, so as not to hinder progress in eradicating gender-based pay discrimination. In this regard, it asks the Government to provide an updated list of the provisions (legislative, regulatory or otherwise) implementing the principle of the Convention, that is to say ensuring that: (i) men and women receive equal remuneration for work of equal "value"; and (ii) the scope of comparison between men and women extends beyond the same establishment or enterprise.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1998)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the Federation of Korean Trade Unions (FKTU) and the Korea Employers' Federation (KEF), communicated with the Government's report, as well as the observations of the Korean Confederation of Trade Unions (KCTU) received on 20 September 2019. It further notes the observations of the KCTU and the KEF, communicated with the Government's supplementary information, as well as the comments of the Government on those observations.

*Article 1 of the Convention. Discrimination on the basis of political opinion. Schoolteachers.* The Committee recalls that, in its previous comment, it stated that, insofar as political activities undertaken by elementary, primary and secondary school teachers are held *outside* of the school establishment and are *unrelated* to teaching, a general prohibition of political activities does not constitute an inherent requirement within the meaning of *Article 1(2)* of the Convention and concluded that disciplinary measures against teachers who engage in such activities constitute discrimination on the ground of political opinion, contrary to the Convention. Consequently, it urged the Government to take immediate steps to ensure that elementary, primary and secondary school teachers enjoy protection against discrimination based on political opinion in conformity with the Convention, as well as measures to ensure that teachers are not subject to disciplinary measures for such reasons. The Committee notes that, once again, the Government recalls that the Korean Constitution guarantees the political neutrality of elementary, primary and secondary education and refers to decisions of the Constitutional Court of 2012 and 2014 in this regard and to its decision of 23 April 2020 maintaining that the prohibition of elementary, primary

and secondary teachers to join any political party or other political organization (according to article 65.1 of the State Public Officials Act) is constitutional. The Committee cannot but reiterate that, although in certain circumstances restrictions with respect to political opinion might constitute a bona fide qualification for certain posts (an inherent requirement of the job), it is essential that such restrictions are not carried beyond certain limits. This is because such practices may come into conflict with the Convention's provisions that require the implementation of a policy designed to eliminate discrimination on the basis of political opinion, in particular in respect of public employment (General Survey of 2012 on the fundamental Conventions, paragraph 831). The Committee notes the Government's indication that a number of amendment bills to guarantee public officials' and teachers' political freedom, such as political party membership and the right to participate in election campaigns, are pending before the National Assembly. The Committee also notes the Government's commitment to ensuring that the Committee's requests are discussed. In this regard, the Committee notes the KCTU's observations that bills introduced in 2017 to reform the State Public Officials Act (SPOA), the Local Public Officials Act (LPOA) and the Public Official Election Act (POEA) are still pending before the competent standing committee, despite recommendations from the National Human Rights Commission of Korea that these laws be amended. ***Recalling that the protection of opinions which are neither expressed nor demonstrated would be futile, the Committee requests the Government to provide information on the status of these amendments. It urges the Government to take concrete steps to ensure that schoolteachers enjoy protection against discrimination based on political opinion, as provided for in the Convention.***

*Inherent requirements of the job. Political opinion and public officials.* In its previous comment, the Committee asked the Government to: (1) consider limiting the prohibition of political activities to certain positions and therefore consider the possibility of adopting a list of jobs in the public service for which political opinion would be an inherent requirement; and (2) in the meantime, provide information on the practical application of section 65(1) of the State Public Officials Act. The Committee notes the Government's acknowledgment that the freedom of civil servants in terms of their expression of political opinion and activities is limited in accordance with article 7 of the Constitution which provides that: "(1) all public officials shall be servants of the entire people and shall be responsible to the people; and (2) the status and political impartiality of public officials shall be guaranteed". It adds that this should be understood with the purpose of the career civil service system in mind, whereby public officials are recruited based on required qualifications for a certain grade and not with a specific position in view. It is only at a later stage that specific tasks and positions are allocated. The Government argues that, due to this specific characteristic of the Korean career civil service, it would be difficult to identify in advance and list the specific tasks which could be subject to limitations regarding political activities and opinion. It adds, however, that it fully understands the need for guaranteeing greater freedom of political expression to public officials and commits, when the National Assembly starts the process of revising the relevant legislation in the future, to support actively this process in order to ensure that an in-depth discussion takes place. In the supplementary information provided, the Government refers to the decision of the Constitutional Court of 23 April 2020 which ruled that the prohibition on forming or joining a political party was constitutional "as it is designed to ensure political neutrality of their service as servants to all citizens" but considered that the prohibition on forming or joining "any other political organization" was unconstitutional because it was too ambiguous. In this regard, the Government states that it will amend the State Public Officials Act in order to ensure clarity and the political neutrality of public officials. With regard to the practical application of the SPOA, the Government states that, among public officials who faced disciplinary action for violating section 65(1) over the period 2015–19, no official in general service (including teachers) has been the subject to disciplinary action for violating the prohibition of political party membership. The Committee notes, however, the KCTU's observation that teachers were indicted in 2015 and 2017 for the alleged violation of section 66 of the SPOA which prohibits public officials from engaging in any collective activity for any labour campaign or activities other than public services; and that these cases are still pending in court. It adds that several trade unions have requested that the provisions in several acts which excessively restrict the right of political activities of public officials be revised. The Committee wishes to recall that, in cases in which one of the criteria cited by the Convention is taken into consideration in determining the inherent requirements of a job, an objective reappraisal should be made in order to determine whether these prerequisites are really justified by the requirements of the job. Consequently, it cannot but reiterate that political opinion may be taken into consideration as a prerequisite justified by the inherent requirements of a given job, only if this restriction applies to a narrow range of jobs and not for the entire public sector. ***The Committee asks the Government, once again, to consider limiting the prohibition of political activities to certain positions and therefore to consider the possibility of adopting, in the near future, a list of jobs in the public service for which political opinion would be considered an inherent requirement. It asks the Government to provide information on any developments made in this regard, including before the National Assembly.***

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

## Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 2001)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the Federation of Korean Trade Unions (FKTU) and the Korea Employers' Federation (KEF), communicated with the Government's report, as well as the observations of the Korean Confederation of Trade Unions (KCTU) received on 20 September 2019. It further notes the observations of the KEF communicated with the Government's supplementary information.

*Article 3 of the Convention. National policy. Legislative developments.* In its previous comment, the Committee requested the Government to provide information on: (1) the application of the Framework Act on Gender Equality, 2014 as amended, and the Equal Employment Opportunity and Work-Family Balance Assistance Act, 2007 as amended; (2) the concrete measures taken in application of several plans aiming at gender equality in employment and support to workers with family responsibilities; and (3) the family-friendly company certification system, indicating the criteria taken into account and process to award the certification to a corporation. The Committee notes the information provided by the Government in its report, notably the implementation of the Second Basic Plan for Gender Equality Policies (2018-2022) to ensure equal rights and opportunities of men and women and create a society that promotes work-life balance, the setting up of a gender equality committee and yearly implementation plans. It notes with ***interest*** that the scope of application of the Equal Employment Opportunity and Work-Family Balance Assistance Act, which used to be limited to businesses with five employees or more, has been extended to all workplaces, except those constituted only by relatives living together and housekeeping employees (Article 2 of the Presidential Decree No. 28910 of May 28, 2018), and that the paternity leave, under article 18-2 of the Act, has been extended from five to ten days in August 2019.

The Committee notes the Government's indication that it has established and implemented the "Women's Employment Plan" as the Sixth Basic Plan for Equal Employment Opportunities, focusing on three aspects (preventing career breaks, supporting reemployment after a career break and creating a non-discriminatory working environment) with seven major projects and 64 implementation strategies. It has taken measures to increase support and quality of childcare and nursery services and guaranteed workers' maternal and parental rights by eliminating blind spots in maternity and parental leave (notably by raising the benefits after the first three months of childcare leave, up to 50 per cent of the ordinary wage, and allowing workers who have worked for less than one year to take childcare leave). It also promoted family-friendly business management by raising public awareness on the issue, enhancing support and guidance for companies to promote work-life balance, strengthening public-private cooperation and promoting a culture of leaving work on time. According to the Government, the results of a 2018 implementation monitoring survey show enhanced support for childcare and the spread of a 'work-life balance' culture. The Government introduced child benefit in the amount of 100,000 won per month (USD80) for families in the bottom 90 per cent of income-earners and expanded the childcare support infrastructure (12 new community childcare centers, 574 public kindergartens and 238 public childcare centers). It also improved the childcare support system, notably for vulnerable families, by upgrading in-home childcare services and increasing childcare expense support for single-parent families. Finally, it raised the ceiling for father's childcare leave bonus schemes and increased the income replacement rate of benefits for reduced working hours during childcare periods (up to 80 per cent); implemented a vacation support program for workers and encouraged more companies to apply for a "family-friendly enterprise certification" (3,833 as of January 2020, compared to 2,807 in 2017). The Committee notes the information provided by the Government on the criteria taken into account and the process to award such certification.

The Committee welcomes such initiatives, as well as the implementation of the Second Basic Plan for the Promotion of Economic Activities of Career-interrupted Women (2015-2018) and the coming into force of the third Basic Plan (2020-2024). The Committee notes that many of these initiatives are geared specifically towards women and that even the names of some of the plans and initiatives reveal the correlation between caregiving duties (especially towards children) and female workers. The Committee wishes to recall that the Convention, and its accompanying Recommendation (the Workers with Family Responsibilities Recommendation, 1981 (No. 165)), have the dual objective of creating equality of opportunity and treatment in working life between men and women with family responsibilities, on the one hand, and between men and women with such responsibilities and workers without such responsibilities, on the other. Where inequalities exist between men and women workers regarding their family responsibilities and where that situation results in restricting the economic activity of women workers only, it would be legitimate to aim measures at women, provided that men are not formally barred from access to such measures should they find themselves in the same circumstances (see General Survey of 1993 on workers with family responsibilities, paras 25 to 29). The Committee also notes the observations made by FKTU and KCTU regarding the fact that family obligations are still overwhelmingly

associated with, and carried out by, women and that female workers' careers are disproportionately impacted.

***In view of the above, the Committee requests the Government: (i) to indicate the concrete measures taken to promote equality of opportunity and treatment in employment for men and women workers with family responsibilities as well as between workers with family responsibilities and those without such responsibilities; (ii) to indicate, more particularly, how it is ensured that those family-friendly measures do not reinforce the stereotype predominantly associating family responsibilities to female workers and create a feminization of diverse forms of employment and working arrangements; and (iii) to continue to provide information on any new legislative or policy development with a view to implementing the Convention.***

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

## Kuwait

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

*Article 1 of the Convention. Definition and prohibition of discrimination in employment and occupation. Legislation and practice*. For a number of years, the Committee has been urging the Government to take the necessary measures to explicitly prohibit direct and indirect discrimination based on race, sex, colour, religion, political opinion, national extraction and social origin: with respect to all aspects of employment and occupation, namely access to vocational training, employment and particular occupations, and terms and conditions of employment; and covering all workers (that is, both nationals and non-nationals, in all sectors of activity, in the public and the private sectors, and in the formal and informal economy). The Government indicates in its report that Labour Law No. 6 of 2010 provides in sections 2 and 6 for the principle of equal treatment for all workers, as section 2 provides that "[t]he provisions of this Law shall apply to all workers in the private sector" and section 6 establishes that, "[w]ithout prejudice to any more advantageous benefits and rights granted to workers in individual or collective contracts, special regulations or by-laws observed by the employer or in accordance with professional or general customs, the provisions of this Law shall represent the minimum level of workers' rights." Section 46 provides that: "The service of the worker shall not be terminated without any justification or as a result of his activity in the syndicate or a claim or his legal rights in accordance with the provisions of the law. The service of the worker may not be terminated for reason of gender, race or religion." The Committee takes due note of section 46 of the Labour Law, which prohibits discrimination in the case of termination of employment on the basis of three grounds, namely gender, race and religion. However, the Committee recalls in this respect that the prohibition of discrimination in employment and occupation must cover all aspects of employment and occupation and encompass the seven prohibited grounds of discrimination listed in *Article 1(1)(a)* of the Convention. ***The Committee once again urges the Government to take the necessary measures without delay to: (i) explicitly prohibit in the Labour Law direct and indirect discrimination based on race, sex, colour, religion, political opinion, national extraction and social origin with respect to all aspects of employment and occupation, including recruitment, and covering all workers; and (ii) ensure that all workers are protected in practice against all forms of discrimination, in employment and occupation, and provide full information in this respect.***

*Article 1(1)(a). Discrimination based on sex. Sexual harassment*. The Committee recalls that the Government referred in a previous report to sections 191 and 192 of the Penal Code, which establishes the offence, subject to penalties, of "dishonouring another person under threat, by force or deceit". For a number of years, the Committee has been emphasizing that addressing sexual harassment only through criminal proceedings is not normally sufficient, due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, and the fact that criminal law generally focuses on sexual assault or "immoral acts", and not the full range of behaviour that constitutes sexual harassment in employment and occupation (2012 General Survey on the fundamental Conventions, paragraph 792). In its previous comment, it therefore asked the Government to adopt provisions: (1) defining and prohibiting both quid pro quo and hostile working environment sexual harassment; and (2) establishing remedies and sanctions. In the absence of further information on these points, the Committee recalls once again that the provisions of the Penal Code do not address the full range of behaviour that constitutes sexual harassment in employment and occupation and that criminal proceedings are not normally sufficient to eliminate sexual harassment in these specific areas. The Committee also recalls that sexual harassment is a serious manifestation of sex discrimination and a violation of human rights, and requires effective measures to prevent and prohibit it, which should address both quid pro quo and hostile environment sexual harassment (2012 General Survey, paragraph 789). The Committee further notes that in its 2017 concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the absence of legislation criminalizing sexual harassment in the workplace and recommended the amendment of the Private Sector Labour Act, the Civil Service Act and

the Police Force Order Act in order to criminalize sexual harassment in the workplace and ensure effective access to legal redress for victims of sexual harassment (CEDAW/C/KWT/CO/5, paragraphs 36 and 37). ***In light of the above, the Committee once again urges the Government to take the necessary measures to ensure that a comprehensive definition and a clear prohibition of both forms of sexual harassment (quid pro quo and hostile work environment) in employment and occupation is included in the Labour Law. It also asks the Government to: (i) take preventive measures, including awareness-raising initiatives on sexual harassment in employment and occupation and on the social stigma attached to this issue, among workers, employers and their respective organizations, as well as law enforcement officials, including the respective procedures, compensation and penalties; and (ii) provide information on the number, nature and outcome of cases of sexual harassment in employment and occupation dealt with by labour inspectors, the courts or any other competent authority.***

*Migrant workers. Sponsorship system.* The Committee previously noted that Kuwait's sponsorship system (*kafala*), under which the legal status of migrant workers is tied to their employers, who act as their sponsors for obtaining a visa, has not been abolished, and it requested the Government to provide information on the concrete steps taken or envisaged to review the sponsorship system. It notes that the Government's report is silent on this subject. In this respect, the Committee notes that, in its 2017 concluding observations, the CEDAW recommended the Government to "continue efforts to completely abolish the *kafala* (sponsorship) system" (CEDAW/C/KWT/CO/5, paragraph 37). The Committee wishes to underline that, where a system of employment of migrant workers places those workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, this could result in discrimination based on the grounds enumerated in the Convention, including race, colour, national extraction and sex (2012 General Survey, paragraph 779). ***The Committee asks the Government to take proactive steps to ensure that all migrant workers, including women migrant workers, enjoy effective protection against discrimination on the grounds set out in the Convention, namely race, colour, sex, religion, political opinion, social origin and national extraction. The Committee also asks the Government to provide statistical information on the number of men and women workers who have submitted complaints against their employers or sponsors regarding discrimination and abuse, and the outcome of the cases, indicating whether they have requested and been granted a change of workplace.***

*Stateless persons or residents without nationality (Bidoons).* In its previous comments, the Committee asked the Government to provide information on: (1) the results of the implementation of the road map adopted by the Council of Ministers (Resolution No. 1612/2010); (2) the measures taken to ensure that all stateless persons or residents without nationality (*Bidoons*) are protected against discrimination in employment and occupation, including in access to employment, on the grounds set out in the Convention; and (3) to provide statistical information on the number of *Bidoons* living in the country and on their employment status. The Government indicates that the Central System, within the meaning of Law No. 68 of 2015, for stateless persons and residents without nationality, who are referred to by the Government as "illegal residents", is working intensively on the implementation of the road map, in addition to providing civil, cultural and social services and facilities for stateless persons. The Government adds that, by virtue of the Council of Ministers Decision No. 309 of 2011, the Central System provides numerous services to "illegal residents", including free education, free treatment and issuing all official documents (birth and death certificates, marriage and divorce contracts and authentic certificates). Collaboration is also ongoing between the Central System and the Civil Service (*Diwan)*, the Public Authority, the Federation of Cooperative Societies and the Kuwait Ports Authority. The collaboration has resulted in jobs being found for stateless people in response to the needs of the labour market. According to the Government, 324 stateless persons were appointed to government bodies and 600 were appointed to the Kuwait Petroleum Corporation and its companies in 2018. In addition, with the collaboration of the Ministry of Defence, some of them were enrolled in the military. The Committee notes the measures taken by the Government to provide employment for stateless persons and residents without nationality, but points out that it does not indicate how they are protected against discrimination in employment and occupation. ***The Committee asks the Government to: (i) take the necessary measures to ensure that all stateless persons and residents without nationality (Bidoons) are protected in practice against discrimination in employment and occupation based on the grounds prohibited by the Convention in access to education, vocational training and employment; and (ii) provide more detailed information on the results of the implementation of the road map adopted by the Council of Ministers (Resolution No. 1612/2010).***

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continues to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value.

Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

*Article 2. National equality policy*. In the absence of information on the progress made in the adoption of a national equality policy, the Committee recalls that: (1) the primary obligation of ratifying States is to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination; and (2) the implementation of a national equality policy presupposes the adoption of a range of specific measures, which often consist of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes and awareness-raising (2012 General Survey, paragraphs 841 and 848). ***The Committee therefore once again asks the Government to take the necessary measures to formulate, in collaboration with employers' and workers' organizations, and adopt a national equality policy covering all workers aimed at eliminating discrimination in employment and occupation on all the grounds covered by the Convention. The Committee requests the Government to provide information on the progress made in this regard.***

*Article 5. Special protection measures. Work prohibited for women*. In its previous comments, the Committee noted the Government's indication that sections 22 and 23 of the Labour Law, which prohibit the employment of women at night, with some exceptions, and in work that is hazardous, arduous or harmful to health or violates public morals, are intended to protect women workers in general, and particularly pregnant women. The Committee requested the Government to take measures to ensure that protective measures applicable to women are limited to maternity protection in the strict sense, or based on occupational safety and health (OSH) risk assessments and do not constitute obstacles to the employment of women. The Government's report does not contain any information in this respect, except a reference the provisions of Chapter 4 of the Labour Law on maternity protection and occupational safety and health. The Committee once again recalls that protective measures for women may be broadly categorized into those aimed at protecting maternity, in the strict sense, which come within the scope of *Article 5,* and those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society, which are contrary to the Convention and constitute obstacles to the recruitment and employment of women. The Committee further recalls that it considers that provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (2012 General Survey, paragraphs 839 and 840). Therefore, any restrictions on women's access to work based on health and safety considerations must be justified and based on scientific evidence and, when in place, must be periodically reviewed in light of technological developments and scientific progress to determine whether they are still necessary for protection purposes. ***The Committee urges the Government to: (i) review its approach regarding restrictions on women's employment in light of the above principles to ensure that any protective measures taken are limited to maternity protection in the strict sense, or are based on occupational safety and health risk assessments and do not constitute obstacles to the employment of women; and (ii) supply information on any developments in this regard.***

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

## Lao People's Democratic Republic

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2008)

*Articles 1. 2 and 3 of the Convention. Protection of workers against discrimination. Legislation. Scope of application.* The Committee previously noted that the Labour Law (2014) excludes civil servants, among others, from its application and that, according to the Government, the Law on Government Officials No. 74/NA of 2015 prohibits discrimination against government officials. It also noted that, by requiring domestic workers to "comply with the working contract", section 6 excludes them from the

protection of the Labour Law. Recalling that the principle of the Convention applies to all workers, the Committee asked the Government to indicate how civil servants and domestic workers are protected against discrimination in employment and occupation. The Committee notes the Government's indication in its report that the contract between domestic workers and their employers is governed by specific regulations. The Government adds that the Ministry of Labour and Social Welfare is drafting a Decision on the management of domestic workers, which will be in conformity with the Convention. ***The Committee therefore asks the Government to provide detailed information on the specific regulations that apply to domestic workers, to which the Government refers, and to indicate how these regulations protect them from discrimination in employment and occupation on the grounds set out in the Convention. It also asks the Government to provide information on the draft Ministerial Decision on the management of domestic workers. Noting the Government's indication that the Law on Government Officials No. 74/NA of 2015 is only available in Lao, the Committee asks the Government to provide a copy of the Law and to identify the specific provisions that protect civil servants from discrimination in employment and occupation on the grounds set out in the Convention.***

*Article 1(1)(a). Prohibition of discrimination.* In its previous comments, the Committee noted that the Labour Law 2014, reforming the Labour Law 2007, prohibits direct and indirect discrimination in the workplace in general terms (sections 3(28) and 141(9)), without clearly defining direct and indirect discrimination. In addition, while there are provisions prohibiting gender discrimination, the Committee noted that the Labour Law 2014 no longer explicitly prohibits discrimination on the grounds of race, religion and belief, as previously provided for in section 3(2) of the Labour Law 2007, nor does it prohibit discrimination based on colour, political opinion, national extraction or social origin. The Committee notes the Government's reply, referring to article 35 of the Constitution (as revised in 2015), which provides that "Lao Citizens are equal before the law, irrespective of their gender, social status, education, beliefs and ethnic group". It also notes the Government's very general statement that it promotes equal rights for all persons without discrimination. The Committee is therefore once again bound to recall the importance of clear and comprehensive definitions of what constitutes discrimination and, in particular, of what constitutes direct and indirect discrimination, in identifying and addressing its many manifestations (2012 General Survey on the fundamental Conventions, paragraphs 743–745). In addition, recalling that the Labour Law 2014 only appears to prohibit discrimination by employers towards employees, the Committee once again draws the Government's attention to the fact that the Convention covers a wider range of situations, including the situation of discrimination by an employee towards another employee. Finally, the Committee again emphasizes that, where legal provisions are adopted to give effect to the Convention, they should include at least all the grounds set out in *Article 1(1)(a)*, namely race, colour, sex, religion, political opinion, national extraction and social origin (2012 General Survey, paragraph 853). ***The Committee once again asks the Government to clarify whether the prohibition of discrimination concerns both employment and occupation and applies equally to employers and employees. It also asks the Government to take steps to amend the Labour Law 2014to clearly define direct and indirect discrimination, and explicitly prohibit discrimination on at least all the grounds set out in the Convention, and to provide information on the progress achieved to this end. In the meantime, the Committee once again asks the Government to indicate how workers are protected in practice against direct and indirect discrimination on all the grounds set out in Article 1(1)(a) of the Convention.***

*Discrimination based on sex. Sexual harassment.* The Committee previously noted that section 83(4) of the Labour Law 2014 allows a worker to bring an end to the employment contract in the event of harassment or sexual harassment by the employer, or when the employer ignores sexual harassment, and that section 141(4) prohibits employers from violating the personal rights of employees, especially women employees, by means of speech, sight, text, touch or touching inappropriate areas. The Committee however noted that sexual harassment is not explicitly defined and prohibited in the Labour Law 2014, and that it is unclear how the above provisions protect workers from all forms of sexual harassment in employment and establish adequate remedies and sanctions. In reply to the Committee's request for information on the measures taken by the Government to define, prevent and prohibit sexual harassment at work, the Government replied that rape is prohibited by sections 128 and 129 of the Penal Law 2005. The Committee therefore recalled that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher standard of proof applicable, which is harder to meet, especially if there are no witnesses, and the fact that criminal law generally focuses on sexual assault or "immoral acts", and does not cover the full range of behaviour that constitutes sexual harassment in employment and occupation (2012 General Survey, paragraph 792). The Committee notes with ***regret*** that the Government has not replied to its previous requests. The Committee also notes, from the concluding observations of 2018 of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), the persistent barriers, including stigma, fear of retribution, deep-rooted discriminatory gender stereotypes and limited legal literacy, that deter women and girls from registering their complaints regarding gender-based discrimination and sexual harassment (CEDAW/C/LAO/CO/8-9, 14 November 2018, paragraph 13(a)). ***The Committee therefore once again asks the Government to take action to: (i) define, prevent and prohibit sexual harassment in employment and***

***occupation, both quid pro quo and hostile working environment harassment; (ii) provide for adequate sanctions and remedies; and (iii) provide information on the progress achieved in this regard. In the meantime, it asks the Government to provide information on the application in practice of sections 83(4) and 141(4) of the Labour Law 2014, including with respect to cases of sexual harassment. With a view to raising awareness of the issue, the Committee once again encourages the Government to formulate and implement practical measures to prevent and eliminate sexual harassment in employment and occupation, in cooperation with employers' and workers' organizations, such as through practical guidance, training, seminars or other awareness-raising activities, and to provide information on any progress made to this end. Finally, with regard to enforcement, the Committee takes note of the Government's statement that there have been no reports of sexual harassment cases and refers to its comments in its direct request.***

*Article 1(1)(b). Additional grounds of discrimination.* The Committee previously noted that sections 87(1), 100 and 141(2) of the Labour Law 2014 provide protection against discrimination on the basis of pregnancy, marital status and HIV status in recruitment and termination of employment, but no longer prohibit discrimination based on nationality, age or socio-economic status, which were previously included in the Labour Law 2007. ***Noting that the Government has once again not provided information on this subject, the Committee is bound to reiterate its request to the Government to indicate the measures taken, in consultation with employers' and workers' organizations, with a view to maintaining the same level of protection against discrimination on the basis of nationality, age or socio-economic status as previously contained in the Labour Law 2007 with respect to all aspects of employment.***

*Article 4. Activities prejudicial to the security of the State.* The Committee has repeatedly asked the Government to provide information on the application in practice of section 65 of the Penal Law 2005, which establishes a broad prohibition of activities considered to be prejudicial to the security of the State, including "propaganda activities", and to indicate how it ensures that this provision does not result in practice in discrimination based on political opinion in employment and occupation. The Committee notes the Government's indication that section 65 has been replaced by section 117 of the new Penal Law 2017, and that its contents remain the same. It also notes the Government's repeated reference to article 44 of the Constitution on freedom of association and section 11 of the Trade Union Law 2007 on collective agreements. However, it notes with ***concern*** that the Government has once again not provided any information on the application in practice of the current legislation. ***The Committee therefore urges the Government to provide detailed information on the application in practice of section 117 of the Penal Law 2017 and section 11 of the Trade Union Law 2007, and in particular to indicate the steps taken to ensure that these provisions do not in practice result in discrimination in employment and occupation on the basis of political opinion, including information on any complaints made by employees or extracts of any court decisions in this regard.***

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

## Latvia

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1992)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations of the Free Trade Union Confederation of Latvia (FTUCL) communicated with the Government's reports.

*Articles 1 and 2 of the Convention. Assessing and addressing the gender pay gap.* Referring to its previous comments, the Committee notes from the statistical information provided by the Government in its report, that, in 2018, gender pay differentials in gross monthly earnings were still higher in the public sector than in the private sector (18.2 per cent and 15.1 per cent respectively), but continued to widen in the private sector, while they slightly decreased in the public sector. The Committee notes, from Eurostat data, that the unadjusted gender pay gap (the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men) was estimated at 14.1 per cent in 2018. However, the gender pay gap was as high as 34.9 per cent in the financial and insurance activities and 25.3 per cent in wholesale and retail trade. The Committee notes the adoption of the Plan for the Promotion of Equal Rights and Opportunities for Women and Men for 2018-2020 which focuses on promoting economic independence and equal opportunities for women and men in the labour market, in particular by contributing to the achievement of the Inclusive Employment Guidelines for 2015-2020 which set as a priority to reduce the gender pay gap. It notes the Government's statement that, as a result, a study on the factors and causes of gender pay inequality, and its prevalence in certain sectors, was to be finalized by the Ministry of Welfare in the course of 2020. As regards its previous comments concerning the inclusion of equal remuneration in the indicators of the "Sustainability Index" for enterprises, the Committee notes the lack of information provided by the Government on the contents of the guidelines and recommendations developed by experts for each enterprise or on any follow-up action

undertaken to ensure their implementation. Referring to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), concerning gender occupational segregation, the Committee notes, from the statistical information provided by the Government, that women are mostly represented in economic activities characterized by low levels of remuneration, such as accommodation and food; education; human health and social work and other service activities. It further notes that women employed in the same economic activity as men systematically receive lower remuneration. The Committee notes this information with ***concern***. It further notes that, in its 2018 report under the national-level review of implementation of the Beijing Declaration, the Government highlights that the gender pay gap, differences in labour market participation, and the division of care responsibilities are a set of reasons that impact on women's pensions, the difference in pensions between women and men being estimated at 12.7 per cent in 2016 (p. 32). In that regard, the Committee notes that, in its 2020 concluding observations, the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the persistent gender pay gap resulting in lower pension benefits in traditionally female-dominated occupations (CEDAW/C/LVA/CO/4-7, 10 March 2020, paragraph 35(a)). The Committee further notes that, in its July 2020 report on the impact of COVID-19 measures on gender equality, the European network of legal experts on gender equality and non-discrimination from the European Commission highlighted that among the recipients of sickness allowance for leave on account of a COVID-19 diagnosis or quarantine, female workers were entitled to a daily sickness allowance which was 3.5 euros (EUR) lower than for male workers, again highlighting the existing pay gap. ***The Committee urges the Government to provide information on the concrete measures and activities undertaken to address the gender pay gap, both in the public and private sectors, in particular by addressing occupational gender segregation and promoting women's access to jobs with career prospects and higher pay, including in the framework of the Plan for the Promotion of Equal Rights and Opportunities for Women and Men for 2018-2020 and the Sustainability Index. In that regard, it asks the Government to provide information on the content of the study undertaken by the Ministry of Welfare or any other authorities concerning the extent and causes of wage differentials between men and women, as well as on any recommendations made to address it. The Committee asks the Government to continue to provide statistical data on the earnings of men and women, disaggregated by economic activity and occupation, both in the public and private sectors.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Article 1(2) of the Convention. Discrimination on the basis of national extraction. Inherent requirements of the job.* For a number of years, the Committee has been expressing concern at the discriminatory impact that the language requirements of the Law on State Language of 1999 may have on the employment or occupational opportunities of minority groups, in particular the large Russian-speaking minority. It recalled that section 6(2) of the Law provides that employees of private institutions, organizations and enterprises and self-employed persons shall use the official language if their activities affect the "lawful interests of the public" and observed that this requirement affects a large number of posts and occupations (public security, health, morality, health care, protection of consumer rights and employment rights, safety in the workplace and supervision of public administration). The Committee requested the Government to consider drawing up a list of occupations for which the use of the official language is required under section 6(2) of the Law on State Language so as to limit it to cases where language is an inherent requirement of the job. The Committee observes that, according to the January 2017 data of the Central Statistical Bureau (CSB), the ethnic distribution of the Latvian population included 25.4 per cent Russians. It notes with ***regret*** the absence of measures taken by the Government to limit the list of occupations for which the use of the official language is required under the Law. The Committee notes the Government's statement in its report and additional information that several amendments have been introduced between 2017 and 2020 in Cabinet of Ministers Regulation No. 733 of 2009, which prescribes the required level of proficiency in Latvian for each profession or occupation, pursuant to section 6(5) of the Law. The Government indicates that the purpose of the amendments is principally to: (1) harmonize the professions and occupations listed in the regulation with the titles and codes of professions included in the classification of occupations; and (2) provide a transitional period until 1 July 2021 for the persons whose state language proficiency for the performance of their professional and office duties has been increased by at least one level. In this regard, the Government recalls that, after passing the Latvian language examination successfully, people will receive a proficiency certificate to prove to the employer and educational institutions their ability to communicate in Latvian. However, if a person fails to master one level of the language courses, she or he will lose the opportunity to apply for the next level and will only have a second chance to apply for the same level once a year. The Committee notes the detailed information provided by the Government on the various Latvian language learning

programmes and courses provided to children and adults by some municipalities, the State Employment Agency (SEA) and the Latvian Language Agency (LVA). In this regard, it notes more particularly that, between 2016 and 2018, 587 third-country nationals received Latvian language training to facilitate their integration into the labour market, in the framework of the project of the Asylum, Migration and Integration Fund implemented by the LVA. It further notes the Government's statement that one of the objectives of the National Identity, Civil Society and Integration Policy Implementation Plan 2019–20 is to strengthen Latvian language literacy in society.

In its supplementary information, the Government indicates that a gradual switch to Latvian as the sole language of instruction has been started and, to that end, amendments were introduced in 2018 in the Law on Education of 1998 and the Law on General Education of 1999. The Government states that the implementation of the reform regarding the language of instruction will be supported by new teaching and learning materials, including training for teachers, in order to help them successfully implement the new competence-based education content in Latvian. In that regard, the Committee notes that in 2018 the LVA launched a project aiming to support 3,500 teachers by 2021, including teachers with ethnic minority background, in order to help them develop their Latvian language skills for professional purposes. However, the Committee notes that, in their concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) and the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) express concern at the education reform, which will create undue restrictions on access to education in minority languages. The CERD also expresses specific concern at section 6 of the Law on State Language, which may result in direct and indirect discrimination against minorities in access to employment in public and private institutions (CEDAW/C/LVA/CO/4-7, 10 March 2020, paragraph 33, and CERD/C/LVA/CO/6-12, 25 September 2018, paragraph 16). The Committee wishes to recall that discrimination based on national extraction can occur when legislation imposing a State language for employment in public and private sector activities is interpreted and implemented too broadly and, as such, disproportionately and adversely affects the employment and occupational opportunities of minority language groups. Furthermore, it recalls that, in order to come within the scope of the exception provided for in *Article 1(2*) of the Convention regarding inherent requirements of a particular job, any limitation regarding access to employment must be required by the characteristics of the particular job, and in proportion to its inherent requirements. Such exception must be interpreted restrictively so as to avoid undue limitation of the protection that the Convention is intended to provide (2012 General Survey on the fundamental Conventions, paragraphs 764 and 827–831). ***In light of the persistent large number of posts and occupations for which the use of the official language is required under section 6(2) of the Law on State Language, the Committee urges the Government to take the necessary steps to avoid any undue limitation on employment and occupational opportunities for any group by limiting the number of occupations in which proficiency in Latvian is considered to be an inherent requirement of the job. It further asks the Government to continue providing information on Latvian language classes and activities carried out to ensure that its national legislation, including the ongoing reform regarding the language of instruction, does not create in practice direct or indirect discrimination in access to education and employment for minority groups, in particular the large Russian-speaking minority.***

*Articles 1(2) and 4. Discrimination on the basis of political opinion. Inherent requirements of the job. Activities prejudicial to the security of the State*. For a number of years, the Committee has been referring to the mandatory requirements set out in the Law on the State Civil Service of 2000, which provides that, in order to qualify as a candidate for any civil service position, the person concerned may not be or have been ''in a permanent staff position, in the state security service, intelligence or counterintelligence service of the USSR, the Latvian Soviet Socialist Republic (SSR) or some foreign State" (section 7(8)), or ''member of organizations banned by laws or court rulings" (section 7(9)). The Committee drew the Government's attention to the fact that the Law applies to any state civil service position and to employment by specified services irrespective of the level of responsibility, and requested the Government to amend sections 7(8) and 7(9) of the Law or to take steps to clearly stipulate and define the functions to which these sections apply. The Committee notes the Government's repeated statement that the purpose of such restrictions is to prevent persons from entering the public service who are not loyal to the State and who could constitute a threat to national security. The Government adds that in April 2019 the Ministry of Justice prepared a report on the necessity and appropriateness of the restrictions imposed by the Law on the State Civil Service on former employees of the Latvian SSR National Security Committee and concluded that such restrictions should be maintained in order to "ensure a loyal, professional and politically neutral State civil service, which ensures legal, stable, efficient and transparent operation of the public administration". Observing that the report of the Ministry of Justice highlights that it would however be more appropriate for a democratic country to assess the individual circumstances in each case and adopt a decision based on such assessment of the degree of past cooperation, the nature of the work, etc., the Committee notes the Government's indication that such information is not available and such a recommendation would thus be impossible to implement. With regard to the number of persons dismissed or whose applications have been rejected pursuant to sections 7(8) and 7(9) of the Law on the

State Civil Service, the Government states that such data is not available for now. While understanding the Government's concerns and noting its explanations, the Committee again draws the Government's attention to the fact that the Law applies to any state civil service position and to employment by specified services irrespective of the level of responsibility. It recalls that, to come under the scope of the exception provided for in *Article 1(2)* regarding the inherent requirements of a particular job or in *Article 4* on the security of the State, any limitation regarding access to employment should be interpreted strictly in order to avoid any undue limitations on the protection which the Convention seeks to guarantee. More particularly, it recalls that criteria such as political opinion may be taken into account as an inherent requirement, under *Article 1(2)*, only for certain posts involving special responsibilities directly concerned with developing government policy. Moreover, for measures not to be discriminatory under *Article 4* of the Convention, they must: (1) affect an individual on account of activities he or she is justifiably suspected or proven to have undertaken, and that such measures become discriminatory when taken simply by reason of membership of a particular group or community; (2) refer to activities qualifiable as prejudicial to the security of State; and (3) be sufficiently well defined and precise to ensure that they do not become instruments of discrimination on the basis of political opinion. In addition to these substantive conditions, the legitimate application of this exception must respect the right of the person affected by the measures to appeal to a competent body established in accordance with national practice (2012 General Survey, paragraphs 832–835). ***The Committee urges the Government to take the necessary steps to amend sections 7(8) and 7(9) of the Law on the State Civil Service in order to limit their scope of application to specific functions and positions in the State civil service, in conformity with the provisions of the Convention. It asks the Government to provide information on any progress made in that regard. In the meantime, the Committee asks the Government to provide any available data on the application of sections 7(8) and 7(9) in practice, including on the number of persons whose applications have been rejected pursuant to these sections, the reasons for these decisions and the functions concerned, as well as any appeals lodged against such decisions.***

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

## Lebanon

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Gender pay gap.* The Committee recalls its previous comments in which it noted that, according to statistics published in October 2011 by the Central Statistics Office, in 2007 the gender pay gap was an estimated 6.2 per cent in services; 10.8 per cent in commerce; 21 per cent in agriculture; 23.8 per cent in manufacturing; and 38 per cent in transport and communications. ***In the absence of updated information in this regard in the Government's report, the Committee once again requests it to take the necessary steps to gather, analyse and communicate data on the remuneration of men and women and wage gaps in the different sectors of economic activity, including the public sector, and for different professional categories. The Committee once again requests the Government to adopt specific measures to rectify gender pay gaps, including raising awareness among employers, workers and their organizations of the principle of equal remuneration for men and women for work of equal value, and to provide information on any action taken to this end and on any obstacles encountered.***

*Article 2. Legislation. Equal remuneration for men and women for work of equal value.* For more than 40 years the Committee has been requesting the Government to ensure that the principle of equal remuneration for men and women for work of equal value is given full legal expression. The Committee notes with ***regret*** that the Government's report merely indicates that the new draft Labour Code is still under examination. ***The Committee is therefore bound to urge the Government to ensure that the draft Labour Code gives full legal expression to the principle of equal remuneration for men and women for work of equal value, in order to facilitate a broad scope of comparison encompassing not only equal or similar work, but also work of an entirely different nature that is of equal value overall. Expressing the firm hope that the Government will be in a position to report progress on this matter in the near future, the Committee asks the Government to provide a copy of the relevant provisions when they have been adopted.***

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

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

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Protection of workers against discrimination, including sexual harassment. Law and practice.* For more than 20 years the Committee has been requesting that the Government introduce a definition and a general prohibition of direct and indirect discrimination on the grounds set out in *Article 1(1)(a)* of the Convention, within the framework of the Labour Code reform, applicable to all aspects of employment and occupation. The Committee recalls that the Labour Code currently in force (the Labour Code of 1946, as

amended) only covers discrimination between men and women in certain aspects of employment (section 26) and does not provide effective protection against all forms of sexual harassment, namely quid pro quo and hostile working environment sexual harassment. Indeed, the only section of the Code that could be applied in cases of sexual harassment is a provision that authorizes employees to leave their jobs without notice when "the employer or his representative commits the offence of molestation of the worker" (section 75(3)). The Committee recalls in this regard that legislation under which the sole redress available to victims of sexual harassment is the possibility to resign, while retaining the right to compensation, does not afford sufficient protection for victims of sexual harassment since it punishes them and could therefore dissuade victims from seeking redress (see 2012 General Survey on the fundamental Conventions, paragraph 792). The Committee notes with ***regret*** that the Government's report does not contain any information on the progress or content of the ongoing reform of the Labour Code. However, the Committee observes that, according to the third annual report (2015) on the implementation of the National Strategic Plan for Women in Lebanon (2011–21), the Ministry of Labour has prepared a bill criminalizing sexual harassment in the workplace. ***Consequently, the Committee urges the Government to take the necessary steps to ensure that the new Labour Code contains provisions defining and prohibiting direct and indirect discrimination on at least all of the grounds set out in Article 1(1)(a) of the Convention, in all aspects of employment and occupation, as defined in Article 1(3), and all forms of sexual harassment (quid pro quo harassment and the creation of a hostile working environment). The Committee once again asks the Government to provide information on any progress made with a view to adopting the draft Labour Code. In the absence of full legislative protection against discrimination, the Committee also once again requests the Government to adopt specific measures to ensure, in practice, the protection of workers against discrimination on the grounds of race, colour, religion, political opinion, national extraction and social origin, and against sexual harassment in employment and occupation, including measures to raise awareness of these issues among workers, employers and their respective organizations, in order to improve prevention.***

*Foreign domestic workers. Multiple discrimination.* For more than ten years, the Committee has been examining the measures taken by the Government to address the lack of legal protection for domestic workers, most of whom are women migrants, since these workers are excluded from the scope of the Labour Code and are particularly vulnerable to discrimination, including harassment, on the basis of sex and other grounds such as race, colour and ethnic origin. The Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) noted with concern that "abuse and exploitation of migrant domestic workers continues to occur in spite of the measures taken by the State party". The CERD also noted with concern that "victims are often not able to seek assistance when they are forcibly confined to the residence of their employers or when their passports have been retained". The CERD recommended the following measures: "abolish the conditions that render migrant domestic workers vulnerable to abuse and exploitation, including the sponsorship system and the live-in setting"; "extend the coverage of the Labour Code to domestic work, thereby granting domestic workers the same working conditions and labour rights as other workers, including the right to change occupation, and subjecting domestic work to labour inspections"; "ensure that any specific legislation on domestic employment is aimed at tackling migrant domestic workers' increased vulnerability to abuse and exploitation"; and "conduct campaigns to change the population's attitudes towards migrant domestic workers and to raise awareness of their rights" (CERD/C/LBN/CO/18–22, 5 October 2016, paragraphs 41–42). The Government reports that domestic workers are covered by the Code of Obligations and Contracts, and once again refers to the model contract and the Bill on the employment of domestic workers. The Government also indicates that a Bill to ratify the Domestic Workers Convention, 2011 (No. 189), was submitted to the Council of Ministers and that the national steering committee of the Ministry of Labour, which is responsible for examining relations between employers and domestic workers, is currently developing significant measures to guarantee compliance with contracts and abolish the sponsorship system. However, the Government states that this process will take time. In this regard, the Committee notes the Government's indication that the Ministry of Labour and official bodies have not established restrictions regarding changes of employer and that this is an issue that only concerns the worker and the employer. ***Recalling its previous comments and noting with regret that the situation remains unchanged, the Committee urges the Government to take the necessary measures, in cooperation with the social partners, to ensure genuine protection for migrant domestics workers, in law and practice, against direct and indirect discrimination on all of the grounds set out in the Convention, including against sexual harassment, and in all areas of their employment, either through the adoption of a bill on the employment of domestic workers or, more generally, within the framework of the labour legislation. The Committee asks the Government to supply information on any progress made in this regard and on any legislative changes to abolish the sponsorship system. The Committee asks the Government, in particular, to ensure that any new regulations envisaged on the right of migrant workers to change employers do not impose conditions or restrictions likely to increase these workers' dependence on their employer and thus increase their vulnerability to abuse and discriminatory practices.***

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

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

## Libya

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as the information at its disposal in 2019.

The Committee notes the observations of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC), received respectively on 26 August and 1 September 2019.

The Committee notes the complexity of the situation prevailing on the ground and the armed conflict in the country.

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussion which took place in the Conference Committee on the Application of Standards (CAS) on the application of the Convention and the conclusions adopted.

*Articles 1 and 3(b) of the Convention. Definition of discrimination. Draft Constitution*. The Committee notes that, in its conclusions, the CAS asked the Government to amend article 7 of the draft Constitution to ensure that the grounds of race, national extraction and social origin are included as prohibited grounds of discrimination. The Committee notes that both the IOE and the ITUC call on the Government to amend article 7 of the draft Constitution. The Committee notes the Government's indication in its report that the Minister of Labour and Rehabilitation sent two letters (Nos 791 and 789, both dated 29 August 2019) to the President of the Presidential Council on the possibility of incorporating these changes into the draft Constitution and into the Constitution when adopted. ***The Committee hopes that the draft Constitution will be amended as requested and asks the Government to provide information on any developments in this regard***.

*Labour legislation*. In its previous comment, the Committee noted that Law No. 12 of 2010 promulgating the Labour Relations Act (LRA 2010) does not contain a definition of discrimination. It also noted that section 3 of the LRA 2010 prohibits discrimination on the grounds of "trade union affiliation, social origin or any other discriminatory ground", but does not explicitly include the grounds of race, colour, sex, religion, political opinion and national extraction. In its conclusions, the CAS asked the Government to: (1) take concrete actions to ensure that direct and indirect discrimination on all grounds is prohibited in law and in practice; (2) ensure that the legislation covers, directly and indirectly, all the recognized prohibited grounds for discrimination set out in *Article 1(1)(a)* of the Convention and take measures to prohibit discrimination in employment and occupation in law and in practice; and (3) include a definition of the term "discrimination" in the LRA 2010. The Committee notes that both the IOE and the ITUC have called on the Government to amend the LRA 2010 in accordance with the conclusions of the CAS. In this regard, the Committee takes note of the Government's indications that the words "or any other discriminatory grounds" in section 3 of the LRA 2010 cover all forms of discrimination without exception, and that the possibility of including the definition contained in *Article 1(1)(a)* of the Convention in the new draft labour law is being taken into consideration. ***The Committee requests the Government to take measures to ensure that the national labour legislation includes a clear and comprehensive definition of discrimination in employment and occupation covering at least all the grounds set out in Article 1(1)(a) of the Convention and to provide information in this respect***.

*Articles 1 to 3. Discrimination on the basis of race, colour and national extraction. Sub-Saharan migrant workers*. The Committee notes that in its conclusions the CAS asked the Government to: (1) ensure that migrant workers are protected from ethnic and racial discrimination and from forced labour; (2) educate and promote equal employment and opportunities for all; (3) take immediate action to address the situation of racial and ethnic discrimination against migrant workers from sub-Saharan Africa (including women migrant workers) and, in particular, put an end to forced labour migration practices; and (4) conduct surveys to examine the situation of vulnerable groups, including migrant workers, in order to identify their problems and possible solutions. The Committee also takes note of the observations of the ITUC indicating that migrant workers from sub-Saharan Africa, and in particular women, remain especially at risk of discrimination. According to the ITUC, the Government should adopt and provide information on the concrete measures taken or envisaged to ensure that the prohibition in law and practice of direct and indirect discrimination is effective for all workers on Libyan territory, irrespective of their origin, nationality or status. The ITUC further calls for the adoption of measures to ensure that victims of discrimination have access to justice and obtain protection from reprisals and compensation for the damage suffered, and that effective, proportionate and dissuasive penalties are imposed on the perpetrators of discriminatory behaviour. Lastly, the ITUC underlines the fundamental importance of building the capacity of the labour inspection services with a view to combating all forms of discrimination in employment and occupation. The Committee takes note of the information provided by the Government on its efforts to combat human trafficking, and specifically that: (1) the national legislation prohibits human trafficking; (2) a bill increasing the penalties for human trafficking is currently under review by the legislative authorities; (3) the Office of the Public Prosecutor is investigating cases of abuse; and (4) victims who cannot afford to pay their legal fees can be assisted by a counsel appointed by the court. The Committee also notes the Government's indication that it is collaborating with neighbouring countries, the countries of origin of the victims and perpetrators, and with relevant local and international organizations, such as the International Organization for Migration (IOM), to combat human trafficking.

In its supplementary information, the Government further indicates that there is no current data on the number of convicted persons, nor on the number of cases. Moreover, the majority of informal shelters for migrant workers are closed and the remaining few are currently being closed following monitoring by law enforcement bodies. Medical and therapeutic services are provided to migrant workers in the formally recognized shelters, such as the "Tajoura" and "Baten el Jabbal" shelters, in coordination with the IOM, Médecins sans frontières and the Red Cross.

The Committee notes with ***deep concern*** the report of the United Nations Committee on the Protection of the Rights of All Migrant Workers and their Families (CMW) indicating that migrant workers from sub-Saharan Africa continue to be severely discriminated against, and that acts of physical and verbal abuse against them persist, including by Libyan officials, such as representatives of the Directorate for Combating Illegal Migration and the Libyan Coast Guard. The Committee also notes that, despite the fact that the LRA 2010 provides for mechanisms to resolve labour disputes, the CMW expresses great concern at the widespread impunity for violations of the rights of migrant workers, who are unable to seek justice for fear of being detained for illegal entry and stay (CMW/C/LBY/CO/1, 8 May 2019, paragraphs 28, 30 and 34). ***While noting the additional information provided by the Government, the complexity of the situation prevailing on the ground resulting from the ongoing armed conflict in the country as well as the impact of the current COVID-19 pandemic, the Committee urges the Government to: (i) take further action to address the situation of racial and ethnic discrimination against migrant workers from sub-Saharan Africa, including measures to ensure that the legislation on non-discrimination is applied in practice, that migrant workers subject to discrimination in employment and occupation have access to remedies, irrespective of their legal status in the country; and (ii) raise awareness of and promote equal employment and opportunities for all. The Committee asks the Government to provide information in this respect***.

*Technical assistance*. The Committee notes that the CAS invited the Government to continue to engage and actively participate in ILO technical assistance in order to promote equitable and effective labour migration policies. The Committee also takes note of the IOE's observations referring to three projects for which the Government would be receiving technical assistance from the Office: (1) the project "Building the capacity of Libyan constituents and national actors to address unacceptable forms of work and promote fair and effective labour migration policies"; (2) the "Jobs for Peace and Resilience Flagship Programme"; and (3) the project "Support for Fair Migration for the Maghreb (AMEM)***". Noting that these projects are currently on hold, the Committee requests the Government to provide information on the resumption of technical assistance provided by the Office and its results.***

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

## Lithuania

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)

*Articles 1 and 2 of the Convention. Assessing and addressing the gender pay gap.* Referring to its previous comments where it noted that since 2011 the gender pay gap had been increasing regularly, the Committee notes, from 2020 Eurostat data, that the gender pay gap in unadjusted form (the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men) decreased from 15.2 per cent in 2017 to 14 per cent in 2018. It further notes, from the statistical information provided by the Government, that, in 2018, the gender pay gap was estimated to be 14.1 per cent in the public sector and 14.2 per cent in the private sector. The Committee notes the Government's indication, in its report, that the Programme on National Progress for Lithuania for 2014-2020 sets as a specific objective the reduction of the gender pay gap to 7 per cent by 2030. The Government adds that, to this end, it plans to continue the implementation of the measures identified in the Action Plan 2018-2021 for the Implementation of the National Programme on Equal Opportunities for Women and Men 2015-2021, namely by: (1) conducting surveys on wage differentials and disseminating their results; (2) organizing awareness-raising campaigns and educational and informational events, including information seminars for target groups (social partners, media, policymakers) on gender pay and pension gaps and their causes in order to resolve issues related to market segregation; and (3) conducting thematic reviews, including pay audits, in order to increase pay transparency and present their results to the Tripartite Council. The Committee further notes the Government's statement that it will continue to address sectoral and occupational gender labour market segregation. In that regard, the Committee notes, from the statistical information provided by the Government, that, in 2018, women were earning less than men in all types of activities except transport, and storage and construction. The largest gender pay gaps were observed in the financial and insurance sector (37.3 per cent), information and communications (27.8 per cent), human health care and social work (26.9 per cent) and manufacturing (24.8 per cent). In 2018, the average gross hourly earnings in industry, construction and services (excluding public administration, defence and compulsory social insurance) was estimated at €4.95 for women and €5.75 for men. The Committee further notes that in 2017 while women represented 77.1 per

cent of the civil servants (excluding statutory), their remuneration was on average 10.3 per cent lower than those of men. The Committee notes that, according to the 2019 European country report on gender equality, the difference between men's and women's earnings is largely explained by the concentration of women in low-paid sectors and in certain categories of occupations. According to this report, more recent studies also confirmed that differences in the salaries of men and women are based on unjust and unfair setting of salary rates without considering most of the internal and external factors. Employers are more likely to assign men to more responsible and better-paid job positions, although the educational indicators of women are higher than those of men in today's society (p. 16). The Committee further notes that, in their recent concluding observations, several United Nations (UN) treaty bodies expressed concern about the persistent gender pay gap which results in lower levels of pension benefits and salaries in traditionally female-dominated occupations (CEDAW/C/LTU/CO/6, 12 November 2019, paragraph 36; and CCPR/C/LTU/CO/4, 29 August 2018, paragraph 15). ***Welcoming the recent downward trend observed in the gender pay gap, the Committee urges the Government to pursue its efforts and to provide information on the concrete measures and activities undertaken (in the framework of the Action Plan 2018-2021 for the Implementation of the National Programme on Equal Opportunities for Women and Men 2015-2021 or otherwise) to address the gender pay gap, both in the public and private sectors, in particular by addressing occupational gender segregation and promoting women's access to jobs with career prospects and higher pay. Recalling that section 23(2) of the Labour Code provides that an employer who has more than 20 employees on average must submit to the work council and the trade union, at least once a year, updated information, disaggregated by sex and occupation, on the average pay of employees (except for managerial positions), the Committee asks the Government to provide statistical information on the earnings of men and women, disaggregated by economic activity and occupation, both in the public and private sectors.***

*Articles 3 and 4. Objective job evaluation. Cooperation with workers' and employers' organizations.* Referring to its previous comments where it noted that, as a result of a survey conducted in 2015 on the implementation of the methodology for the assessment of jobs and positions, the Tripartite Council suggested an updating of the 2005 methodology, the Committee notes the Government's statement that such methodology has not been reviewed. The Committee recalls that: (1) section 26(2)(3) of the Labour Code provides that an employer shall use uniform job evaluation criteria; (2) section 140(3) provides that remuneration systems are determined by collective agreement or, in the absence of such agreement (in workplaces with an average number of at least 20 employees) that it must be approved by the employer after information and consultation procedures, and be accessible to all employees; and (3) section 140(5) provides that the remuneration system must be designed in such a way as to avoid any gender discrimination or discrimination based on other grounds. It notes the Government's statement that out of the 259 collective agreements currently in force, only ten collective agreements contain provisions providing that companies shall ensure fair and competitive wages for all of their employees and avoid any discrimination, in particular on the ground of sex. The Committee observes the lack of information on whether such instruments contain specific provisions on remuneration systems. In that regard, the Committee notes that, according to the 2019 European country report on gender equality, the remuneration systems generally lack transparency as: (1) wages are usually set by individual agreement and not by a collective agreement; and (2) individual wages belong to the sensitive data protected by statutory or contractual confidentiality clauses (p. 18). As regards collective agreements, the Committee notes that the Government refers to the implementation, from 2017 to 2020, of the project "Model of Cooperation between Trade Unions and Employers in Developing Social Dialogue" which aims at enhancing social dialogue between employers' and workers' organization, in order to produce methodological measures for collective bargaining. ***In light of the persistent gender pay gap, the Committee urges the Government to provide information on the application of sections 26(2)(3) and 140(3) and (5) of the Labour Code in practice, including by indicating how it is ensured that remuneration systems are based on objective job evaluation methods that are free from gender bias. It further asks the Government to provide information on: (i) any measures taken or envisaged to promote wage transparency; and (ii) any steps taken, in cooperation with the social partners, to promote the principle of the Convention in branch, territorial and enterprise negotiations, and ensure that work in sectors and occupations in which women are predominantly employed is not being undervalued. The Committee again asks the Government to provide relevant extracts of collective agreements containing provisions that reflect the principle of the Convention.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1994)

*Articles 2 and 3 of the Convention. Equality of opportunity and treatment for men and women.* The Committee previously noted the persistence of occupational gender segregation and discriminatory attitudes concerning men's and women's roles at work and requested the Government to provide information on: (1) the steps taken, including in the context of the National Programme on Equal

Opportunities for Women and Men 2015–21 and its accompanying Action Plan 2015–17, to effectively reduce occupational gender segregation and promote equality of opportunity and treatment of men and women in employment and occupation, including in recruitment, as well as on the results achieved; and (2) the distribution of men and women in employment, disaggregated by economic sector and occupation. The Committee notes the Government's statement in its report that the Action Plan 2018–21 for the Implementation of the National Programme on Equal Opportunities for Women and Men 2015–21 continues to support initiatives aimed at: (1) addressing gender stereotypes and segregation, as well as its causes and consequences, including through the exchange of good practices; (2) addressing gender segregation in education; and (3) disseminating information on equal opportunities in employment for the social partners. The Committee notes from the statistical information provided by the Government that in 2018 women accounted for 47.2 per cent of employed persons (compared with 52.8 per cent of men) and 45.3 per cent of participants who benefited from active labour market policy measures (compared with 54.7 per cent of men). In this regard, it notes from Eurostat data that the employment rate of women increased from 75.5 per cent in 2017 to 77.4 per cent in 2019 (compared with 79 per cent for men in 2019), and is one of the highest employment rates of women of the countries of the European Union. The Committee welcomes this information. It however notes from the statistical data of the European Institute for Gender Equality (EIGE) that the share of women on the boards of the largest publicly listed companies fell from 14 per cent in 2010 to 12 per cent in 2019. The Committee notes, from the Government's 2019 report under the national-level review of implementation of the Beijing Declaration (the Beijing+25 national report), that despite increased attention in the area of gender equality, violations of equal opportunities for women and men are still noticeable in many areas, and gender segregation in the labour market remains a reality. Indeed, while nearly 27 per cent of women compared to 6 per cent of men work in education, human health and social work activities, there are four times more men (31 per cent) than women (8 per cent) who work in science, technology, engineering and mathematics (STEM) occupations. The Government adds in the Beijing+25 report that gender equality in educational attainment and participation has improved slightly, while the situation concerning segregation in study fields remains a challenge, as 37 per cent of women students are still concentrated in the fields of education. health and welfare, humanities and the arts. The Committee recalls that, under section 26(6) of the Labour Code, employers with an average number of more than 50 employees are required to adopt and publish the measures implementing and enforcing the principles of the equal opportunities policy. It however notes, from the Government's Beijing+25 report, that in the companies inspected by the State Labour Inspectorate this requirement was generally not implemented. It further notes that, in its 2019 concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expresses concern at: (1) the persistence of discriminatory gender stereotypes and calls for adherence to traditional roles and values for women, including in the media, as noted in the survey conducted by the Equal Opportunities Ombudsperson; (2) that the Law on Strengthening Families may reinforce discriminatory stereotypes regarding the roles and responsibilities of women and men in family and society; and (3) vertical and horizontal occupational gender segregation (CEDAW/C/LTU/CO/6, 12 November 2019, paragraphs 20 and 36). ***The Committee urges the Government to strengthen its efforts to effectively address stereotypes of the roles and responsibilities of women and men in the family and in society, as well as occupational gender segregation. In this regard, the Committee requests the Government to provide information on: (i) the measures taken to promote equality of opportunity and treatment for men and women in education, employment and occupation, particularly in the framework of the Action Plan 2018–21 for the Implementation of the National Programme on Equal Opportunities for Women and Men 2015–21; (ii) any assessment made of the impact of such measures, as well as the application of section 26(6) of the Labour Code in practice; and (iii) the distribution of men and women in employment, disaggregated by economic sector and occupation.***

*Equality of opportunity and treatment irrespective of race, colour and national extraction. Roma.* Referring to its previous comments concerning the persistent discrimination against the Roma in education and employment, the Committee notes the Government's indication that the integration of the Roma into the labour market is enhanced through: (1) the implementation of general measures which fall under the responsibility of the Lithuanian Labour Exchange; and (2) the implementation of specific projects dedicated to the integration of the Roma into the labour market. In this regard, the Government refers to the Project "Working with the Roma: New job opportunities and challenges", implemented in collaboration with representatives from the Roma community, as a result of which, 40 persons participated in 2018 in a general skills development process, including language classes, and 78 persons started searching for a job or studying to become employed or self-employed. The Committee notes the Government's statement that one of the major obstacles identified for the integration of the Roma into the labour market is the lack of basic education, and that the distance education services provided by the Roma Community Centre only partially address this situation. Referring to its previous comments concerning the adoption of an Action Plan for Roma Integration into Lithuanian Society for 2015–20, the Committee however regrets the lack of information provided by the Government on its implementation. The Committee further notes that, in their recent concluding observations, several United Nations treaty

bodies have expressed concern at: (1) the persistent stereotypes, prejudice and intolerance against the Roma which lead to discrimination in the fields of education and employment; (2) the persistent low literacy rates among the Roma compared with the general population; (3) the persistent low proportion of Roma children and young people completing basic education and the decrease in the number of the Roma with secondary and higher education; as well as (4) the low employment rate of the Roma, particularly Roma women (CERD/C/LTU/CO/9-10, 7 June 2019, paragraph 17, and CCPR/C/LTU/CO/4, 29 August 2018, paragraph 7). The Committee notes this information with ***concern***. It further notes from the statistical information provided by the Government that among the complaints concerning discrimination on the grounds of race, nationality, language, origin, ethnicity and citizenship received by the Office of Equal Opportunities Ombudsperson from 2017 to 2019, 11 concerned employment and 10 education. The Committee however observes that such information does not relate specifically to the Roma. It further notes that, according to the 2019 European Commission country report on non-discrimination, no cases of discrimination against the Roma were brought to the courts from 2015 to 2018, and no complaints regarding discrimination against the Roma were brought to the Equal Opportunities Ombudsperson or started by the Ombudsperson in 2018. ***The Committee urges the Government to strengthen its efforts to combat stigma and discrimination against the Roma, including through awareness-raising campaigns against stereotypes and prejudice, in order to effectively ensure equality of opportunity and treatment in education, employment and occupation for the Roma community. It asks the Government to provide information on: (i) the specific measures taken to that end and on any assessment made of their impact, as well as on any new action plan elaborated as a follow-up to the Action Plan for Roma Integration in Lithuanian Society 2015–20; and (ii) the participation of the Roma in education and vocational training courses, as well as in the labour market.***

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

## Luxembourg

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

*Article 1(1)(a) and (b) of the Convention. Prohibited grounds of discrimination. Legislation.* The Committee previously noted that, pursuant to Act of 3 June 2016, which amends the Labour Code, the Act of 13 May 2008 on equal treatment for men and women, and the conditions of service of local and central government officials, discrimination ‘‘on the basis of a change of sex’’ shall be deemed equivalent to discrimination on the basis of sex. It however drew the Government's attention to the fact that, despite section 454 of the Penal Code, which defines discrimination as ‘‘any distinction made between persons on account of their origin, their skin colour, […] their political views […]’’, the grounds of colour, political opinion, national extraction and social origin are not covered by the Labour Code (section L.241-1), the Act of 16 April 1979 establishing the general conditions of service for central government officials (section 1 *bis*) and the Act of 24 December 1985 establishing the general conditions of service for local government officials (section 1 *bis*). It requested the Government to amend these provisions to include colour, political opinion, national extraction and social origin. The Committee notes the Government's indication in its report that Act of 7 November 2017 amending the Labour Code and the conditions of service of local and central government officials, introduced ‘‘nationality’’ among the grounds of discrimination prohibited

under these laws. While welcoming this information, the Committee wishes to recall that the concept of "national extraction" covers distinctions made on the basis of a person's place of birth, ancestry or foreign origin, and thus differs from "nationality" (2012 General Survey on the fundamental Conventions, paragraph 764). It further notes the Government's repeated statement that victims of discrimination, on grounds which are not prohibited under section L.241-1 of the Labour Code, such as colour, political opinion, national extraction and social origin, can lodge a complaint under section 454 of the Penal Code, for which the Office of the Public Prosecutor will assess the case for prosecution. The Government adds that section L.244-3 of the Labour Code provides for a reversal of the burden of proof in labour tribunals where facts allow the presumption of the existence of discrimination, while under the Penal Code it is for the plaintiff to prove the existence of discrimination. The Committee is bound to reiterate that criminal prosecution is generally not sufficient to eliminate discrimination in the workplace: (1) because of its particular nature, which arises from the specific features of the work environment (fear of reprisals, loss of employment, hierarchies, etc.); and (2) because of the burden of proof, which is often hard to meet. Indeed, in the event of a complaint against discrimination, the burden of proof can be a significant obstacle, particularly as much of the information needed in cases involving unfair or discriminatory treatment is in the hands of the employer (2012 General Survey, paragraph 885). Furthermore, the Committee wishes to draw the Government's attention to the fact that, at national level, the common understanding seems to be that the legislation does not protect against discrimination in employment and occupation on the grounds of colour, political opinion, national extraction and social origin. The Committee refers in that regard to the awareness-raising campaign carried out in 2018 by the Centre for Equality of Treatment (CET) to combat discrimination in recruitment, which referred only to the grounds of discrimination listed in section L.241-1 of the Labour Code, without making any reference to section 454 of the Penal Code (CET, 2018 annual report, page 75). ***In order to enable workers to assert their rights effectively in relation to discrimination based on all the grounds listed in Article 1(1)(a) of the Convention, the Committee urges the Government to take the necessary steps to amend the list of grounds of discrimination prohibited by the Labour Code (section L.241-1), the Act of 16 April 1979 establishing the general conditions of service of central government officials (section 1 bis) and the Act of 24 December 1985 establishing the general conditions of service of local government officials (section 1 bis) to include the grounds of colour, political opinion, national extraction and social origin. It asks the Government to provide information on any progress made in that regard. The Committee further asks the Government to provide information on the number of administrative and judicial decisions handed down by the competent authorities on cases or complaints for discrimination in employment and occupation, including on the basis of section 454 of the Penal Code, specifying the grounds of discrimination, the remedies provided and the sanctions imposed.***

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

## Madagascar

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* For several years, the Committee has been emphasizing that the provisions on equal remuneration of section 53 of the Labour Code are more restrictive than those of the Convention, as they limit the application of the principle of equal remuneration for work of equal value to persons engaged in the same job and with the same vocational qualifications. The Committee notes the Government's indication in its report that in March 2016 the National Conference of Labour Inspectors raised the issue of the amendment of certain provisions of the Labour Code, including section 53, and that a draft text to amend this provision will soon be submitted to the National Labour Council (CNT) to seek the views of the social partners on this subject. ***While recalling that it considers that the full and complete incorporation into the legislation of the principle of equal remuneration for men and women for work of equal value is essential to ensure the effective application of the Convention, the Committee trusts that the Government will take the opportunity of the draft amendment of the Labour Code to achieve the full integration of the principle of the Convention in the new Labour Code, in cooperation with employers' and workers' organizations, and that it will ensure that the new provisions encompass not only equal work or work performed under equal conditions, but also work which is of an entirely different nature, but nevertheless of equal value. It requests the Government to provide information on any progress achieved in this regard and on any other measures adopted or envisaged to promote and ensure equal remuneration for men and women for work of equal value in practice.***

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

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

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 1 of the Convention. Protection against discrimination.* For several years, the Committee has been emphasizing that neither the Labour Code nor the Civil Service Regulations prohibit discrimination on all the grounds covered by the Convention and has been asking the Government to take the necessary measures to bring the legislation into conformity with the Convention. The Committee noted that the Labour Code does not prohibit discrimination on the basis of colour and social origin (section 261), and that the Civil Service Statute does not prohibit discrimination on grounds of race, colour and social origin (section 5). The Committee notes the Government's indication in its report that, in March 2016, the National Labour Inspectors Conference (SAIT) raised the issue of amending the Labour Code provisions concerning prohibited grounds for discrimination and that a draft to introduce colour and social origin into the list of these grounds and expressly prohibit all discrimination, including indirect discrimination, will be transferred shortly to the National Labour Council (CNT) in order to gather the opinions of the social partners in this regard. With regard to the public service, the Committee notes the Government's indication that, while it considers that the term "colour" is not appropriate to the reality of Malagasy society, it is currently studying the possibility of including this motive in the list of grounds of prohibited discrimination. The Government adds that it also plans to introduce the provisions defining and prohibiting all discrimination, including indirect discrimination, and that all these issues will be raised during the forthcoming revision of the Civil Service Regulations. ***The Committee requests the Government to provide information on progress made regarding the revision of the Labour Code and the Civil Service Regulations to harmonize and supplement national legislative provisions in order to prohibit, in both the public and the private sectors, any discrimination on all of the grounds listed in the Convention, including race, colour and social origin, and to include a definition of discrimination which explicitly covers indirect discrimination. The Committee requests the Government to indicate any measures taken or envisaged in this respect, in cooperation with workers' and employers' organizations. The Committee also requests the Government to provide information on the interpretation and application in practice of section 261 of the Labour Code and section 5 of the Civil Service Regulations, and to provide copies of any administrative or judicial decisions issued in accordance with these provisions.***

*Discriminatory job vacancy announcements.* In its previous comments, the Committee noted the allegations of the General Confederation of Workers' Unions of Madagascar (FISEMA) concerning the fact that vacancies for jobs as guards, domestic employees or workers in export processing zones advertised on the radio or through notices in the street, impose affiliation to a certain religion as a condition for recruitment or specify that the job is solely for men or women. The Committee notes the Government's statement that some advertisements for vacancies on radio or through notices in public places, are discriminatory in nature with regard to religion or sex. Given that the advertisement of job vacancies on the radio or on public notices has become common practice, the Government indicates that it envisages adopting legislation to regulate this practice in line with the provisions of the Convention. ***The Committee trusts that the Government will adopt, in cooperation with the workers' and employers' organizations, measures aimed at enforcing national legislation and prohibiting in practice all forms of direct and indirect discrimination on all the grounds listed in the Convention, including religion and sex, in job vacancies advertised on the radio or on public notices. It requests the Government to provide information on any progress made in this regard.***

*Domestic workers.* In its previous comments, the Committee noted that the Christian Confederation of Malagasy Trade Unions (SEKRIMA) highlighted the precarious nature of the conditions of employment of domestic workers, some being employed without an employment contract. The Committee notes the Government's indication that domestic workers enjoy the same rights as other workers, as labour legislation is applicable to them and they can lodge complaints with the labour inspectorate in cases of violations of their rights. The Committee notes, however, that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern about the precarious situation of women and girls in domestic work in private households and recommended that the Government strengthen the capacity of labour inspectors to monitor workplaces, including in private households (CEDAW/C/MDG/CO/6-7, 24 November 2015, paragraphs 30–31). ***The Committee trusts that the Government will take the necessary measures to ensure that domestic workers enjoy, in practice, the protection set out in the provisions of the Labour Code, particularly those relating to non-discrimination and employment conditions. It requests the Government to provide detailed information on the number and outcomes of checks conducted by labour inspectors to ensure the effective application of the provisions of the Labour Code for domestic workers, by sending extracts from inspection reports or relevant studies.***

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

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

## Malawi

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment.* The Committee recalls that it previously asked the Government to consider amending the definition of sexual harassment in section 6(1) of the Gender Equality Act (GEA) of 2013 to explicitly include hostile work environment harassment and to ensure that the "reasonable person" in the definition of harassment no longer refers to the harasser, but to an

outside person, in order to ensure effective protection against all forms of harassment in the workplace. While noting that the Government's report does not contain any information in this respect, the Committee notes the inclusion in the Malawi Public Service Management Policy 2018–2022 of a strategy to "implement programmes aimed at eliminating all forms of violence in the workplace and at home including gender-based violence, particularly sexual violence". ***In order to ensure comprehensive protection against sexual harassment, the Committee asks the Government to amend section 6(1) of the GEA to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser, but to an outside person. The Committee asks the Government to provide information on the measures adopted pursuant to section 7 of the GEA to ensure that employers have developed and are implementing appropriate policies and procedures aimed at eliminating sexual harassment in the workplace. Further, the Committee asks the Government to take steps to address sexual harassment in the public service, including the provision of adequate reporting procedures, remedies and sanctions. It also encourages the Government to consider conducting awareness-raising campaigns, in cooperation with workers' and employers' organizations, focusing specifically on sexual harassment in employment and occupation.***

*Article 2. National Equality Policy. Promoting equality and inclusiveness in the public service.* The Committee welcomes the provision by the Government of statistics on the distribution of men and women in decision-making positions (grades A–F). These statistics show that women never exceed more than 26 per cent of the composition of staff in these grades (25 per cent in the higher grade A, or only one woman, and 10 per cent in grade B). The Committee notes with ***interest*** the adoption in February 2018 of the Malawi Public Service Management Policy 2018–2022, which explicitly refers to the numerous Acts, including the Employment Act of 2000 and the GEA of 2013. The Committee further notes that the policy recognizes that "the public service is not inclusive enough in terms of gender" and other groups and that "there are perceptions that people with disabilities and people from different cultures are not equitably represented in the public service [and a] perception of dominance of a few groups of people in strategic positions based on political affiliations and tribe". According to the policy, the Government will take the following steps: promoting inclusiveness and equity in employment; adopting legislative, executive and administrative measures that guarantee the right to employment and promotion of women, ethnic minorities and people with disabilities, marginalized and vulnerable social groups, in line with GEA and other legislation; and implementing a strategic and systematic approach to human resource development in the public service. ***The Committee asks the Government to take the necessary steps to implement the strategy on equality and diversity in the Public Service Management Policy, and particularly to adopt legislative, executive and administrative measures to that end, and to effectively promote equal opportunities and treatment for all at all levels in the public service through training and awareness-raising. The Government is asked to provide specific information on the results achieved through this policy with respect to the employment of women, persons with disabilities and persons from vulnerable or marginalized groups, and to report any obstacles encountered.***

*Promoting gender equality. National Gender Policy of 2015 and Gender Equality Act of 2013.* The Committee recalls the adoption of the National Gender Policy in 2015, which includes as one of its objectives the creation of "a favourable environment for equal employment opportunities and benefits for women and men in both formal and informal sectors" through the elimination of occupational segregation and discrimination and the review of labour laws. It also recalls the adoption of the Gender Equality Act (GEA) in 2013, which aims to promote gender equality and prohibits and provides redress for direct and indirect sex discrimination, harmful practices and sexual harassment. The GEA also provides for the introduction of programmes designed to raise awareness of its provisions. The Committee notes with ***interest*** that the Government has taken the following steps to promote the GEA: an Implementing and Monitoring Plan for the GEA was launched in 2016; the Committee on Gender was established; awareness-raising meetings targeting magistrates, police officers, representatives of the private sector and community-based and civil society organizations were conducted throughout the country; dissemination of the Act to various stakeholders was organized; and a teaching guide on the GEA was published. The Committee notes the Government's indication that there is a need for rules and regulations on gender equality to be developed and for the provisions on gender in other laws, such as the Public Service Act, the Service Commission Act and the Human Rights Commission Act, to be reviewed and harmonized with the provisions of the GEA. The Government also emphasizes the need to intensify civic education and awareness campaigns targeting traditional leaders and women and acknowledges that there is still a long way to go to achieve gender equality, in particular in employment, training and education. ***The Committee asks the Government to continue disseminating information to raise awareness of the GEA and to intensify its efforts in this regard among workers, employers and their organizations. The Committee asks the Government to take steps to adopt the rules and regulations pursuant to the GEA and to review the provisions on gender equality in other legislation in light of the GEA. It also asks the Government to provide information on the Implementing and Monitoring Plan for the GEA and any measure adopted to promote equal employment opportunities and benefits for women and men in both the formal and informal economy pursuant to the National Gender Policy.***

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

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

# Mauritania

## Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

The Committee notes the observations of the General Confederation of Workers of Mauritania (CGTM), received on 28 August 2019, and the observations of the Free Confederation of Workers of Mauritania (CLTM), received on 12 June 2019. It also notes the Government's reply to the two organizations' observations, received on 21 October 2019.

*Articles 1 and 2 of the Convention. Principle of equal remuneration for work of equal value. Legislation and collective agreements.* The Committee recalls that neither the Labour Code, nor Act No. 93-09 of 18 January 1993 issuing the general regulations of public servants and contractual agents of the State, nor

the general collective labour agreement (CCGT) of 1974 reflect the principle of equal remuneration between men and women for work of equal value laid down by the Convention. The Committee notes that, in its report and its reply to the observations of the CGTM and the CLTM, the Government once again refers to the current reform of the Labour Code and the CCGT of 1974, and indicates that it will take the measures necessary to amend them to ensure the provisions therein clearly reflect the principle of the Convention. It adds that measures will also be taken to this end to amend the general regulations of public servants. ***Emphasizing that the Convention requires the implementation of the principle of equal remuneration between men and women for work of equal value, the Committee requests the Government to take the necessary measures to incorporate this principle into the labour legislation, within the context of the announced reform of the Labour Code and the CCGT, and the envisaged amendments to Act No. 93-09 of 18 January 1993. The Committee requests the Government to provide information on the measures taken to this end.***

*Application of the Convention in practice.* The Committee notes the observations of the CGTM according to which, in practice, there are significant differences between men and women in relation to remuneration for jobs of equal value. According to the organization, employers ensure that women do not attain certain highly skilled posts and, even if women do reach them, they are not treated in the same way as their male peers. The CGTM alleges that there are inequalities of treatment, including a 30 per cent wage gap between men and women and that women are deprived of several other advantages related to their functions. The Committee also notes the observations of the CLTM in which it states that, in the formal sector, there is no discrimination regarding remuneration of men and women for posts with the same vocational training and in the same occupational category. The CLTM states that discrimination is mainly found in relation to positions of responsibility or internal promotion, which benefit men more than women. The Committee once again recalls that, appropriate data and statistics are crucial in determining the nature, extent and causes of unequal remuneration, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and to make any necessary adjustments (see General Survey on the fundamental Conventions, 2012, paras 887-891). The Committee notes that the Government limits itself to indicating that it will take the necessary measures to collect and analyse data on the general policy concerning wages in the country to redress, where necessary, any disparities that may exist within certain activity sectors. ***Therefore, the Committee reiterates its previous request to take the necessary steps to collect and analyse data on wages for men and women and invites the Government to undertake an examination of the causes of the gender remuneration gap in order to devise appropriate remedial measures. The Committee also requests the Government to respond to the observations of the CGTM in this regard.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)

The Committee notes the observations made by the Free Confederation of Mauritanian Workers (CLTM), received on 12 June 2019, and the Government's reply, received on 21 October 2019.

*Article 1(1)(a) of the Convention. Discrimination on the basis of race, colour, national extraction or social origin. Former slaves and their descendants.* In its previous request, the Committee requested the Government to take steps to combat discrimination, including discrimination based on social origin, and the stigmatization suffered by certain segments of the population, particularly former slaves and descendants of slaves, in terms of access to education, training and employment, and to ensure the effective promotion of real equality and tolerance among the population. The Committee notes that, in its observations, the CLTM reports discrimination in access to well-paid and leadership posts to the advantage of only one part of the population, Arab Mauritanians, and the existence of an exclusion policy against black Haratine and Afro-Mauritanian workers from certain activity sectors, despite them being the majority in the population. The Committee notes that the Government's report is silent on this point, but observes that, in its response to the CLTM's observations on the application of the Employment Policy Convention, 1964 (No. 122), the Government contests the allegations of a discriminatory employment policy regarding the Haratine and Afro-Mauritanian communities. The Committee further notes that general information on measures taken to combat discrimination and stigmatization as vestiges of slavery was provided by the Government in its response to the CLTM's observations on the application of the Forced Labour Convention, 1930 (No. 29). The Government indicates that, at the instigation of religious leaders and with the participation of civil society organizations, information and awareness-raising measures have been adopted on the illegitimacy of slavery and on the dissemination of Act No. 2015-031 of 10 September 2015, repealing and replacing Act No. 2007-048 of 3 September 2007, criminalizing slavery and punishing slavery-like practices. Awareness-raising caravans also travelled throughout the territory to inform those affected by the vestiges of slavery of their rights. The Government adds that positive training and integration actions for young graduates of Haratine and Afro-Mauritanian origin have been implemented to assist them find a job, particularly through the establishment of three funds for the beneficiaries of these targeted actions. The Committee notes the report of the high-level mission

that visited Mauritania in April 2018 and recommended the adoption of an action plan to combat forced labour and slavery to, inter alia, institutionalize and coordinate action to raise awareness of slavery and its vestiges, including discrimination. In addition, the Committee notes, according to a communiqué of the President of the Republic, the establishment by a decree of November 29 2019 of a General Delegation for national solidarity and the fight against exclusion ("*Taazour*"), the objective of which is to extend social protection, eliminate all forms of inequality, strengthen national cohesion, combat poverty and coordinate all interventions in the target areas. It notes that this ministerial-level Delegation is mandated over the next five years to implement a programme for the economic and social promotion of populations which have been victims of inequality and marginalization, by strengthening the means of production, and improving the purchasing power, and access to education, health, drinking water, decent housing and energy of the poor population. Lastly, the Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed its concern at the fact that "certain traditional social structures and cultural prejudices continue to stoke racial discrimination and to marginalize the Haratine community, particularly in terms of access to education, employment, housing, health care and social services" and at the "very limited representation of the black African (Halpular, Soninke and Wolof) and Haratine communities in political and public affairs, including in leadership and decision-making positions in public administration, the army and the police, in elective office at the national level and in the private sector and the media" (CERD/C/MRT/CO/8-14, 30 May 2018, paragraphs 11–12). The Committee also refers to its comments on the application of the Forced Labour Convention, 1930 (No. 29), concerning awareness-raising activities on issues relating to slavery and its vestiges, particularly discrimination and stigmatization. ***Noting the willingness of the Government to actively fight against the vestiges of slavery, particularly the discrimination faced by former slaves and their descendants, the Committee requests it to intensify its efforts to raise awareness among all parts of the population of the illegitimacy of slavery and its vestiges, and to eliminate stigmatization and discrimination, particularly social prejudices, and to promote equality without distinction of race, colour, national extraction or social origin in employment or occupation. It also requests it to continue, including within the framework of the Taazour Delegation, its positive actions relating to education, training and employment of persons affected by stigmatization and discrimination based on race, colour, national extraction or social origin and to provide information on the measures taken to this end and the results achieved.***

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

## Mauritius

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Article 2 of the Convention. Determination of minimum wages. Remuneration Regulations.* In its previous comments, the Committee had requested the Government to amend the Remuneration Regulations concerning the salt manufacturing, sugar and tea industries in order to remove all remaining gender-specific job appellations and different wages rates for men and women. The Committee notes that these three Remuneration Regulations were replaced with new ones in 2019. The Committee notes that the Salt Manufacturing Industry (Remuneration) Regulations 2019 do not use gender-specific job appellations. However, they explicitly provide in their second schedule for two different categories of wages, one for male employees and another one for female employees (even though the same wage rate applies to both categories). The Committee also notes that both the Sugar Industry (Agricultural Workers) (Remuneration) Regulations 2019 and the Tea Industry Workers (Remuneration) Regulations 2019 still include gender-specific appellations and set different wage levels for men and women in the same job occupations. ***The Committee urges the Government to amend without delay the Salt Manufacturing Industry (Remuneration) Regulations 2019, the Sugar Industry (Agricultural Workers) (Remuneration) Regulations 2019, and the Tea Industry Workers (Remuneration) Regulations 2019 in order to remove all remaining gender-specific job appellations, and gender specific wage categories and rates in the same job occupations. The Committee also requests the Government to provide information on the measures taken to ensure that, when determining minimum wage rates by occupations in the sectors covered by remuneration regulations, skills considered to be "female" are not undervalued in comparison with traditionally "male" skills and that female-dominated occupations are not undervalued in comparison with male-dominated occupations. The Committee also refers to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Articles 1(a) and 2 of the Convention. Discrimination on the basis of race, colour, national extraction and social origin.* In its previous comments, the Committee expressed concern at the situation of workers from the Malaise Creole community and urged the Government to take proactive measures to address without delay discrimination based on race, colour and ethnic and social origin. In its report, the Government indicates that Mauritius is a multicultural country and that no persons identified themselves as members of the Malaise Creole community during the last population census. The Committee notes that in its activity report 2016–19, the Equal Opportunity Commission (EOC) indicates that complaints of discrimination based on ethnic origin, race, caste and place of origin amount to 9 per cent of the total number of complaints. It also notes that, in its 2018 concluding observations, the United Nations Committee on the Elimination of all Forms of Racial Discrimination (CERD) expressed concerned that the Creoles face *de facto* discrimination in all walks of life, are disproportionately vulnerable to poverty and have limited access to employment, housing, health care and education. The Committee notes with ***regret*** the fact that, as indicated by the CERD, the measures taken by the Government and the EOC have had a limited impact on improving the socioeconomic situation of the Creoles, and the lack of measures specifically targeted at improving their situation (CERD/C/MUS/CO/20-23, 19 September 2018, paragraph 26). ***The Committee once again urges the Government to take proactive measures to address discrimination in employment and occupation based on race, colour and ethnic and social origin, including against workers in Creole communities. The Committee also encourages the Government to undertake studies or research to analyse the situation of the different groups in the labour market with a view to eliminating discrimination in employment and occupation.***

*General observation of 2018.* Regarding the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and differences in remuneration for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, and remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

*Article 1(2). Inherent requirements of the job.* The Committee previously noted that section 13 of the Equal Opportunities Act, 2008 (EOA), provides for a wide range of cases in which an employer or a prospective employer may discriminate against a person on the basis of sex and that section 6(3) of the EOA and section 4(3) and (4) of the Employment Rights Act, 2008 (ERiA), provides that conditions, requirements or practices that have or are likely to have a "disadvantaging effect" are not deemed discrimination where they are "justifiable" or "reasonable in the circumstances". It urged the Government to ensure that the exceptions permitted correspond in a concrete and objective way to the inherent requirements of a particular job. The Committee notes that the Workers' Rights Act, No. 20 of 2019 (WRA), replaced the ERiA, but again provides in section 5(3) that "(a) person does not discriminate against another person by imposing or proposing to impose on that other person a condition, requirement or practice that has or is likely to have a disadvantaging effect, where the condition, requirement or practice is reasonable in the circumstances." Furthermore, the Committee notes the Government's indication that the Guidelines for Employers enumerate the provisions of section 13 of the EOA, without providing further guidance on their scope or implementation. In this regard, the Committee recalls that workers of both sexes should have the right to pursue freely any job or profession and that exclusions or preferences in respect of a particular job should be determined in a concrete and objective manner, taking into account the inherent requirements of a particular job and without reliance on stereotypes or negative prejudices about men's and women's roles. ***The Committee therefore asks the Government to review the application in practice of section 13 of the Equal Opportunity Act, 2008, and section 5(3) of the Workers' Rights Act,***

***No. 20 of 2019, to ensure that the exceptions permitted are in fact based on the inherent requirements of a particular job and do not restrict the right of workers of both sexes to pursue freely any job or profession. It also requests the Government to provide specific examples of the particular jobs concerned, as well as information on any judicial decisions interpreting these provisions or any advice, decisions or recommendations by the Equal Opportunity Commission dealing with this issue.***

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

## Mexico

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1952)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020), as well as the observations of the Authentic Workers' Confederation of the Republic of Mexico (CAT), forwarded with the supplementary information. The Committee also notes the observations of the Autonomous Confederation of Workers and Employees of Mexico (CATEM), the International Confederation of Workers (ITC) and the Regional Confederation of Mexican Workers (CROM), forwarded with the Government's report.

*Article 1(b) of the Convention. Equal remuneration for work of equal value. Legislation.* In its previous comments, the Committee noted that section 86 of the Federal Labour Act provides that there shall be equal pay for equal work performed in the same post, the same working day and conditions of efficiency, and it requested the Government to take the necessary measures to give full legislative effect to the principle of the Convention. The Committee notes the Government's reference in its report to many legislative changes to integrate the principle of gender equality into the legislation (which are examined in greater detail by the Committee in its direct request on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)), although it observes that these changes have not modified section 86 of the Act. The Committee recalls that the legislation should not only provide for equal remuneration for "equal", "the same" or "similar" work, but should also address situations where men and women perform different work that is nevertheless of the same value (General Survey on the fundamental Conventions, 2012, paragraph 679). ***The Committee once again requests the Government to take measures to give full legislative expression to the principle of equal remuneration for men and women for work of equal value as set forth in the Convention.***

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

## Montenegro

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 2006)

*Article 1(b) of the Convention. Work of equal value. Legislation.* In its previous request, the Committee noted that, while the Labour Law of 2011 explicitly provides, in section 77(2), for the principle of equal remuneration for work of equal value by guaranteeing each employed man or woman an equal wage for equal work or work of the same value performed with an employer, section 77(3) of the same Law continues to limit the concept of work of equal value to the same level of education, or professional qualifications, responsibility, skills, conditions and results of work. The Committee also drew the Government's attention to the fact that the expression "with an employer" in section 77(2) of the Labour Law limits the application of the principle of equal remuneration to workers employed by the same employer. The Committee notes the adoption of the new Labour Law in 2020 and that section 99 provides for the principle of equal remuneration for work of the same *value*. However, the Committee notes with ***regret*** that sections 99(1) and 99(2) have the same wording as the previous sections 77(1) and 77(2) of the Labour Law 2011. The Committee therefore once again recalls that the concept of work of equal *value* entails comparing the relative value of jobs or occupations that may involve *different* types of skills, responsibilities or working conditions that nevertheless are of equal *value* (see General Survey on the fundamental Conventions, 2012, paragraphs 673, 675, and 677). ***The Committee urges the Government to take the necessary steps to amend the Labour Law of 2020 in order to give full legislative expression to the principle of the Convention, and to ensure that comparison between the value of jobs or occupations can involve different employers and also different types of skills, responsibilities or working conditions that nevertheless are of equal value. It also requests the Government to provide information on all measures taken to this end.***

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

# Morocco

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)

*Article 2 of the Convention. Equality of opportunity and treatment for men and women. Public service.* The Committee notes with ***interest*** the measures taken by the Government to mainstream gender equality in the public service through the deployment, in collaboration with UN Women, of a gender mainstreaming strategy in the public service providing for: (1) the setting up of administrative structures, the gender-sensitive management of human resources and competencies, and the embedding of equality in the behaviour and organizational culture of the administration; (2) capacity-building and the implementation of training; (3) the adoption of a manual of procedures for gender mainstreaming in recruitment, selection and appointments in the public service; and (4) amendments to the Public Service Regulations to include, inter alia, provisions for granting paternity leave and provisions relating to breastfeeding. It notes that this approach envisages standard specifications for the setting up of crèches close to workplaces, to be adopted by all ministerial departments. With regard to the appointment of women to senior posts in the public service, the Committee welcomes the appointment of women between late 2012 and mid-2019 to 12.4 per cent of senior posts and to 23 per cent of posts at all levels of responsibility. It also notes the obligation to appoint a woman to the committee responsible for interviews for the selection of candidates to these posts. ***The Committee trusts that the Government will be in a position to implement its gender equality mainstreaming policy in the public service and to continue promoting the employment of women at all levels, including in supervisory posts, and requests it to continue its efforts in this field. The Committee requests the Government to carry out regular evaluations of this policy, and to provide information on the results achieved, including statistics to support these evaluations. It also requests the Government to provide information on any amendments to the Public Service Regulations relating to paternity leave and any measures taken to enable men and women civil servants to achieve a better balance between their work and family responsibilities (crèches, etc.).***

*Private sector*. The Committee notes the Government's indication that the National Employment Strategy (SNE) up to 2025 aims, inter alia, at promoting social inclusion and equity, in particular for young persons, women, rural workers and informal workers. The Government also recalls that, further to the evaluation of the Government Equality Plan 2012–16 (ICRAM 1), the Equality Plan 2017–21 (ICRAM 2) has identified seven strategic areas, including increasing the employability and economic autonomy of women and disseminating a culture of equality that combats discrimination and gender-based stereotypes. The Committee welcomes the numerous programmes and projects containing measures to improve the participation of women in the labour market, incorporate gender mainstreaming into all employment policies and promote gender equality and combat gender stereotypes, particularly in the media. The Committee notes the Government's indication that it is providing financial support for the implementation of partnership projects with associations working on the protection of women's rights at work, with the goals of awareness-raising of women regarding their rights and of employers regarding the importance of establishing a culture of professional equality in the enterprise. The Committee also notes that, according to the report entitled "In-depth national examination of the implementation of the Beijing Declaration and Platform for Action after 25 years" (Beijing+25), numerous measures have been taken to improve women's access to real estate, financial services and credit and to professional and business networks, with a view to thus developing entrepreneurship for women. ***Welcoming the measures and initiatives taken by the Government to achieve progress in gender equality in employment and occupation, the Committee trusts that the Government will be in a position to implement them with a view to increasing the participation of women in waged employment and in self-employment, to combat actively gender stereotypes and prejudices and to eliminate obstacles to gender equality. It requests the Government to take measures in this regard and provide information on the measures taken, the evaluations carried out and the results achieved throughout the country, including in rural areas.***

*Institution responsible for promoting equality and combating discrimination.* The Committee notes with ***interest*** the promulgation on 21 September 2017 of Act No. 79.14 concerning the Parity and Anti-Discrimination Authority (APALD), the mandate of which includes receiving and examining complaints of discrimination, making recommendations to the competent authorities and monitoring follow-up action. It also notes that this institution, which includes members of the public administration and civil society, trade union representatives and employers' representatives, is also mandated to issue opinions on draft legislation and propose legislative amendments, promote the principles of equality and non-discrimination, particularly for women, and disseminate good practices in this field. ***The Committee requests the Government to take the necessary steps to ensure that the APALD is established and becomes operational, particularly by granting it the necessary resources and staff to discharge its tasks, not only in relation to the handling of complaints, but also providing advice and recommendations, awareness-raising and training. The Committee requests the Government to provide information in this regard and also on APALD activities for combating discrimination and promoting equality in employment***

***and occupation, including the number and nature of the cases of discrimination handled and their outcome.***

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

## Mozambique

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)

*Article 1 of the Convention. Legislation.* For many years, the Committee has repeatedly requested the Government to take all necessary steps to amend section 108(3) of Labour Act No. 23/2007, which provides that all employees have the right to receive equal wages and benefits for "equal work" without distinction based on, among other things, sex, with a view to ensuring that it fully reflects the principle of equal remuneration for men and women for work of equal *value* set out in the Convention. It previously noted the Government's indication that the principle of the Convention is covered by this provision, and recalled that the concept of "work of equal value" includes, but goes beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. The Committee notes the Government's statement, in its report, that the revision of the Labour Act has already been discussed with the social partners and considered by the Council of Ministers and is now currently being reviewed by the National Assembly. It further notes the adoption of Act No. 10/2017 of 1 August 2017 approving the general status of state employees and agents, forwarded by the Government, and more particularly section 54(2) of the Act which provides that all state employees and agents are entitled to receive equal remuneration for "equal work". Regretting that the Government did not take this opportunitv to include in the legislation a provision explicitly providing for equal remuneration for work of equal *value*, as required by the Convention, the Committee notes however that, in 2021, the Government will benefit from ILO technical assistance in the framework of the «#Trade4DecentWork» project with a view to improve the implementation of ILO fundamental Conventions at national level, in particular by amending its national legislation. ***The Committee trusts that the Government will take every necessary steps to amend section 108(3) of Labour Act No. 23/2007 and section 54(2) of Act No. 10/2017, in order to fully reflect the principle of equal remuneration for men and women for work of equal value in its national legislation, so as to cover not only situations where men and women are performing the same or similar work but also situations where they carry out work that is of an entirely different nature but is nevertheless of equal value. It asks the Government to provide information on any progress made in this regard, in particular as a result of the technical assistance provided by the ILO.***

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

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)

*Article 1 of the Convention. Legislative protection against discrimination.* The Committee previously noted that articles 35 and 36 of the Constitution and section 54(1) of the Labour Act No. 23/2007 provide for equality of rights at work for any worker, regardless of colour, race, sex, ethnic origin, place of birth, language, civil status, age, social condition, level of education, religious and political ideas and affiliation to a trade union. It however noted that the national legislation does not expressly prohibit both direct and indirect forms of discrimination in all aspects of employment and occupation. Regretting the repeated lack of information provided by the Government concerning the scope of application of section 54(1) of the Labour Act in practice, the Committee notes the Government's statement, in its report, that a draft new Labour Act is currently being reviewed by the National Assembly. In that regard, it notes that, in 2021, the Government will benefit from ILO technical assistance in the framework of the "#Trade4DecentWork" project with a view to improve the implementation of ILO fundamental Conventions at national level, in particular by amending its legislation. ***In light of the ongoing revision of the Labour Act, the Committee trusts that the Government will seize every opportunity to explicitly prohibit in its national legislation both direct and indirect discrimination, and that this prohibition will cover : (i) all the grounds listed in Article 1(1)(a) of the Convention, as well as any other grounds already enumerated in its national legislation in accordance with Article 1(1)(b); and (ii) all aspects of employment and occupation (education, vocational guidance and training; access to employment and particular occupations; and terms and conditions of employment). It further asks the Government to provide information on any progress made in this regard, in particular as a result of the technical assistance provided by the ILO.***

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

# Namibia

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

*Article 1(1)(b) of the Convention. Additional grounds, including HIV status. Legislation.* In its previous comment, the Committee requested the Government to take steps to ensure coherence between section 5 of the Labour Act that defines discrimination and section 33 on dismissal, so as to prohibit dismissals on the grounds of HIV and AIDS status, the degree of physical or mental disability, and family responsibilities. The Committee notes that in its report, the Government indicates that the current Labour Act is under review and that section 33(3) will be amended to extend the prohibition of dismissal of an employee to HIV and AIDS status, the degree of physical or mental disability, and family responsibilities. The Committee also requested the Government to provide information on the cases of discrimination in relation to HIV and AIDS status dealt with by labour inspectors and labour courts. The Committee notes that, in this regard, the Government refers to a court case of 2000, in which the Court considered that the refusal to employ a person solely on the basis of this person's HIV status was discriminatory. While taking note of this information, the Committee recalls that the fact that no new cases have been dealt with by the courts in the past twenty years may be an indicator of the lack of awareness, lack of access to remedies, or fear of retaliation. In that regard, the Committee wishes to point out that, according to the results of Namibia's first ever population-based HIV survey, known as NamPHIA, the country has become the first country in Africa to have more than three-quarters of its HIV-affected population virally suppressed (meaning they cannot pass the virus on to someone else) and welcomes this remarkable achievement. However, it also notes that Namibia still ranks fifth highest in the world in terms of its HIV burden, with an estimated 12.1 per cent of adults aged 15–49 living with HIV, according to the latest figures of the Joint United Nations Programme on HIV/AIDS (UNAIDS). ***The Committee trusts the Government will effectively ensure that section 33(3) of the Labour Act will be amended to extend the prohibition of dismissal of an employee to HIV and AIDS status (actual or perceived), the degree of physical or mental disability, and family responsibilities and asks to be provided with a copy of the amendment once adopted. The Committee also asks the Government to: (i) adopt specific measures to ensure that workers who are victims of discrimination on the basis of HIV status (actual or perceived) have effective access to legal remedies; and (ii) provide information on the number of cases of discrimination based on HIV status and on their outcome.***

*Articles 2 and 5. Implementation of the equality national policy and affirmative action.* The Committee recalls that in its previous comment, it noted: (1) the adoption of the National Human Rights Action Plan (NHRAP) 2015–19, which identified as one of the main areas of focus "the right not to be discriminated against", in particular with respect to certain groups including women, indigenous peoples, persons with disabilities and LGBTI persons; and (2) the publication, in November 2017, of the Office of the Ombudsman's Special Report on Racism and Discrimination, which included recommendations for the Government (formulation of programmes and strategies, awareness-raising, support to victims, etc.) and for the employers' organizations (review of recruitment procedures, training to detect discrimination, establishment of procedures to deal with discrimination claims, etc.). The Committee further recalls that in the NHRAP, the following actions were envisaged: (1) a comprehensive review of the regulatory framework to assess non-discrimination compliance; (2) the development of a White Paper on Indigenous Peoples' Rights; (3) research of comparable legal instruments providing protection of the rights of persons with disabilities and developing benchmarks (i.e. building design standards); (4) research and review of laws and policies to identify and rectify provisions that discriminate against "vulnerable groups" (i.e. women, children, elderly persons, sexual minorities, persons with disabilities and indigenous peoples); (5) the review of the Affirmative Action (Employment) Act (Act No. 29 of 1998) with a view to establishing the continued relevance of race as part of the affirmative action criteria; and (6) the review of the current Racial Discrimination Prohibition Act (Act No. 26 of 1991) with a view to enacting new legislation against discrimination. In follow-up to its request to provide information on the implementation of the NHRAP 2015–19 and the impact of the Office of the Ombudsman's Special Report on Racism and Discrimination, the Committee notes that the Government merely indicates that the Namibia Employers' Federation (NEF) stated that it has disseminated the recommendations of the Ombudsman and the NHRAP to all its members. ***The Committee asks the Government to provide detailed information on the concrete measures taken to implement the action planned in the National Human Rights Action Plan 2015-19, in particular the review of the legislative and regulatory framework, and information on any research undertaken, obstacles encountered and results achieved in this regard. It further asks the Government to indicate what follow-up it gave to the recommendations in the Office of the Ombudsman's Special Report on Racism and Discrimination and the concrete steps taken to address such discrimination.***

*Designated groups. Persons disadvantaged on the ground of race, women and persons with disabilities.* In its previous comment, the Committee requested the Government to: (1) step up its efforts to promote access to training and employment opportunities for workers belonging to the three "designated groups" pursuant to the Affirmative Action (Employment) Act, 1998; and (2) provide information on any legislative

developments regarding the New Equitable Economic Empowerment Framework Bill 2015. The Committee notes that the Government refers to the 2016–2017 Employment Equity Commission (EEC) Report, in which the EEC has noted that, after 19 years of affirmative action implementation, "white employees", who constitute a mere 4 per cent of the workforce occupy 56 per cent of positions at the Executive Director level and 26 per cent of management positions. In addition, the Government indicates that results achieved for persons with disabilities were still rather disappointing compared to other groups, as they are under-represented at almost every occupational level. The Committee welcomes the Government's indication that the EEC introduced a number of measures to intensify it efforts towards workplace transformation, including the following initiatives: (1) the EEC identified some provisions of the Affirmative Action (Employment) Act, 1998 that required legislative redress and proposed amendments that are currently under consideration by the Labour Advisory Council (LAC); (2) the EEC engaged in the review of the EEC Employer's Guidelines and the Regulations to the Affirmative Action (Employment) Act, 1998; (3) the EEC prosecutes employers for non-compliance with the provisions of the Affirmative Action (Employment) Act, 1998; (4) the EEC visits work places to provide training on affirmative action; (5) the EEC case management system was introduced in 2017 to manage the affirmative action report process; and (6) the EEC identifies areas in which research projects are particularly needed and, in this context, has singled out research projects on persons with disabilities. The Committee welcomes the Government's efforts to deal with the persistent underlying causes of discrimination against the "designated groups". ***The Committee asks the Government to continue: to (i) step up its efforts to promote access to training and employment opportunities for designated groups and review regularly the affirmative action measures to assess their relevance and impact and to provide information on any measures taken is this regard and the results achieved; and (ii) provide information on any follow-up given to the work of the Employment Equity Commission (EEC) related to the review of the Affirmative Action (Employment) Act, 1998, and on the activities of this Commission. The Government is asked once again to provide information on any legislative developments regarding the New Equitable Economic Empowerment Framework Bill 2015.***

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

## Netherlands

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1971)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP) received on 29 August 2019, as well as the additional observations of the CNV and the FNV received on 24 September 2020, which were also transmitted by the Government.

*Article 2 of the Convention. Measures to address differences in remuneration of part-time workers and workers in other non-standards forms of work contracts*. The Committee previously noted the recommendations made by the Task Force Part-Time Plus established to address equal pay in a wider national context in which men are usually working full time and women part-time. It requested the Government to provide information on targeted measures taken to reduce the pay gap between men and women, taking into account the high number of women engaged in part-time work and their concentration in jobs that are generally lower paid, and to report in detail on the results achieved. The Committee notes the Government's statement, in its report, that a high number of women is still working part-time, in particular young women; the difference in the average number of hours worked per week between women and men (28 hours and 39 hours respectively, in 2017) being much greater that the European average. The Government indicates that, as a result, it has decided to undertake an Interdepartmental Policy Study (IBO) to explore the causes and effects of part-time work, as well as possible obstacles in working more or fewer hours, in order to elaborate relevant policy packages. As regards the concerns previously expressed by the FNV and the CNV regarding the gender pay gap with respect to other non-standard forms of work contracts (fixed-term work, zero or undefined hours contracts and self-employed workers), the Committee notes the lack of information provided by the Government. However, it notes that, in their additional observations, the FNV and the CNV point out that, as a result of the COVID-19 pandemic: (1) the number of hours worked by women has declined more rapidly than the number of hours worked by men; a situation which has had a negative impact on the labour market position of women and the achievement of equal remuneration; and (2) a high number of workers with flexible contracts lost their job. In that regard, the Committee notes that, in its supplementary information, the Government indicates that, on 22 June 2020, a temporary measure (TOFA) was introduced for "flexible workers" that have been laid off after 1 March due to the COVID-19 crisis, with a substantial loss of income. The scheme consists of a one-off gross payment of 1,650 Euros (EUR) for the period from March to May 2020. ***In light of the absence of measures implemented to address differences***

***in remuneration of part-time workers, the Committee urges the Government to provide information on any measures taken to reduce the pay gap between men and women, taking into account the high number of women engaged in part-time work and their concentration in jobs that are generally lower paid, in particular as a follow-up of the planned Interdepartmental Policy Study on part-time work. It again asks the Government to provide information on any measures taken or envisaged to assess and address differences in remuneration with respect to other non-standard forms of work contracts and obstacles that may exist for such workers to initiate legal proceedings concerning pay inequalities between men and women.***

*Measures to address the gender pay gap.* Referring to its previous comments, the Committee notes the Government's indication that the unadjusted pay gap between men and women decreased from 20 per cent, in 2014, to 19 percent, in 2016, in the private sector, and from 10 per cent, in 2014, to 8 per cent, in 2016, in the public sector. The Government adds that, after correction (taking into account differences in part-time and full-time work, age, level of occupation and management posts), in 2016, a difference remained of 7 per cent in the private sector and 5 per cent in the public sector, such figures being unchanged when compared to 2014. The Committee notes the Government's statement that an important part of the explanation of the gender pay gap is the persistent uneven distribution of care responsibilities between men and women which hampers women's participation in the labour market. In that regard, the Committee refers to its comments made on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). As regards women in higher management level, the Committee notes the Government's statement that their number is rising too slowly as, mid-2017, women represented only 11.7 per cent of members of boards of directors and 16.2 per cent of members of supervisory boards. The Government adds that more companies need to work on moving women to higher positions and that it started to monitor progress in that regard, in particular through a benchmark on companies achieving diversity in top positions and the setting-up of a new Business Monitor. The Committee notes that the Government requested the Social and Economic Council (SER) to provide advice on effective measures that would contribute to gender diversity in higher management level. The Committee takes note of this information. However, it notes with ***regret*** the repeated lack of information provided by the Government on additional measures taken to address, in cooperation with the social partners, that part of the difference in remuneration that may be due to discrimination. In that regard, it notes that the FNV, the CNV and the VCP urge the Government to support a law proposal on equal pay for women and men that: (1) would request companies with more than fifty employees to prove that equal remuneration is paid to women and men for equal work; and (2) introduce a certification system with an obligation for employers to provide figures every three years on the remuneration of employees and address unequal remuneration situations, or pay fines, and the labour inspectorate being in charge of such monitoring. Furthermore, the trade unions consider that there is a need to address the possibility that part of the gender pay gap may be caused by discrimination, whether unconsciously or intentionally, while also improving the labour market position of women who are still overrepresented in lower-paid sectors, such as education, health care, childcare, cleaning and retail. In their additional observations, the FNV and the CNV add that the COVID-19 pandemic showed that such sectors are vital as women have been working in the frontline during the recent lockdown, while pointing out that this is not reflected in the level of their remuneration. ***In light of the persistent gender pay gaps, the Committee urges the Government to provide information on the proactive measures implemented to reduce the gender pay gaps, both in the public and private sectors, including by enhancing women's access to jobs with career prospects and higher pay. It asks more particularly the Government to provide information on any measures taken or envisaged to address the difference in remuneration that may be due to gender discrimination, including information on any legislative proposal in relation to the principle of the Convention. Finally, the Committee asks the Government to provide statistical information on the earnings of men and women, disaggregated by economic activity and occupation, both in the public and private sectors.***

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP) received on 29 August 2019, as well as the additional observations of the CNV and the FNV received on 24 September 2020, which were also transmitted by the Government.

*Articles 2 and 3 of the Convention. National equality policy.* The Committee previously noted the various measures implemented in the framework of the Action Plan on Labour Market Discrimination for 2014–2018, in particular in collaboration with social partners, in order to tackle discrimination in

employment. It requested the Government to provide information on any evaluation made on the impact of such measures in promoting equality and addressing discrimination on the grounds set out in *Article 1(1)(a)* of the Convention. The Committee notes the Government's statement, in its report, that a new Action Plan on Labour Market Discrimination for 2018–2021 is currently being implemented, building on the previous action plan. The Government indicates that: (1) the measures previously referred to are still being implemented, such as the Diversity Charter which has now been signed by 180 public and private companies; and (2) several other measures are ongoing, such as the extension of the supervision carried out by the labour inspectorate to make sure that sufficient safeguards are in place at company level to set-up a discrimination-free recruitment and selection policy. The Committee welcomes this information. Noting the Government's statement that the results of such measures will be discussed later, the Committee notes with ***regret*** the repeated lack of information provided by the Government on the impact of the measures implemented to promote equality and address discrimination in the labour market. It further notes that, in their observations, the FNV, the CNV and the VCP support the extension of the supervision powers of the labour inspectorate which is, in their view, necessary to combat discrimination during job interviews where much of discrimination takes place, but highlight that additional measures are needed to ensure enough capacity for labour inspectors to make sure that the rules are strictly enforced and to monitor complaints on discrimination. ***The Committee urges the Government to provide information on the impact of the different measures implemented to promote equality of opportunity and treatment and address discrimination in employment and occupation on all the grounds covered by the Convention, in particular in recruitment and selection processes, including in the framework of the Action Plan on Labour Market Discrimination for 2018–2021. Noting that the action plan will end in 2021, it asks the Government to provide information on any new action plan or policy elaborated as a follow-up, in particular in collaboration with the social partners.***

*Equality of opportunity and treatment irrespective of race, colour or national extraction. Ethnic minorities.* The Committee previously noted the high unemployment rates among "non-Western" persons with a migration background (persons of whom both parents were born outside the Netherlands) and the need to address discrimination against certain ethnic groups, particularly those of Moroccan and Turkish origin, with respect to access to the labour market. Referring to its previous comments concerning the generic measures taken by the Government to address discrimination, in particular in the framework of the Action Plan on Labour Discrimination, the Committee notes the Government's statement that the main goal of the "Further integration into the labour market" programme is to evaluate the effectiveness of the various measures, instruments and policies implemented to address discrimination and improve the labour market position of all non-Western persons with a migration background, including men and women of Moroccan and Turkish origin. The Government adds that the results of the evaluation are expected in 2020–2021. The Committee further notes the Government's indication that the position of people with a non-Western migration background improved both in education and employment. In that regard, it notes, from the statistical information forwarded by the Government, that their net employment rate increased from 57.5 per cent in 2017 to 60.5 per cent in 2018. The Committee welcomes this information. It however regrets the repeated lack of information provided by the Government on: (1) the specific measures taken to address discrimination on the basis of race, colour and national extraction against non-Western minorities; as well as (2) the assessment of the impact of the measures already implemented. In that regard, it notes that, in their observations, the FNV, the CNV and the VCP highlight the persistent discrimination of people with a non-Western migration background in education and access to employment, referring to cases where temporary work agencies accept discriminative requests from hiring companies that explicitly ask for people that do not have a migration background. The trade unions add that it is complex to assess to which extent such practices exist because of the difficulty of collecting relevant statistical information. The Committee further notes that, in its 2019 concluding observations, the Human Rights Committee expressed specific concerns about the fact that persons belonging to ethnic minority groups continue to face discrimination in the labour market (CCPR/C/NLD/CO/5, 22 August 2019, paragraph 15). It further notes that, in its 2020 report, the United Nations (UN) Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance expressed specific concern about: (1) the unemployment rate of persons with a migration background which remains two and a half times higher than that of other Netherlanders, with individuals considered to be of a second-generation non-Western migration background generally facing an even higher unemployment rate, despite superior educational qualifications; (2) the higher percentage of individuals belonging to ethnic minorities who hold a "marginal" job (defined as jobs requiring a commitment of fewer than 20 hours/week) compared with native Netherlanders; and (3) the less favourable position of ethnic minorities, in particular those of Moroccan and Turkish origin, who are particularly disadvantaged in terms of earnings. The Special Rapporteur highlighted that ethnic minorities face discrimination both during hiring and afterwards, once they are in the workplace, as well as in education. Approximately 30 per cent of second-generation Turkish and Moroccan students dropped out of school in 2016 (A/HRC/44/57/Add.2, 2 July 2020, paragraphs 69 to 75). It further notes that, in its 2019 report, the European Commission against Racism and Intolerance (ECRI) expressed similar concerns highlighting that employment gap of these

groups is not narrowing, in part due to discrimination. In that regard, it notes that ECRI recommended that authorities insert indicators and measurable targets to reach for all objectives and measures of the Action Plan against Labour Market Discrimination, while continuing to focus on access to the labour market, ensure that non-discriminatory recruitment procedures are developed and implemented, and extend the competences of the labour inspectorates to the field of recruitment (CRI(2019)19, 4 June 2019, page 10 and paragraphs 74 and 77). ***The Committee therefore urges the Government to strengthen its efforts to effectively address discrimination and ensure equality of opportunity and treatment in education, employment and occupation for non-Western persons with a migration background, including those of Moroccan and Turkish origin. It asks the Government to provide information on the concrete measures implemented to that end, in particular in the framework of the Action Plan on Labour Discrimination, as well as on any assessment made on their impact, including by providing the results of the evaluation which are expected in 2020–2021. The Committee further asks the Government to provide information on any cases of discrimination against non-Western persons with a migration background dealt with by labour inspectors, the Netherlands Institute for Human Rights or the courts, as well as the sanctions imposed and remedies provided.***

*Migrant workers*. The Committee notes that, in their additional observations, the FNV and the CNV express deep concern about the high number of migrant workers in agriculture, food, transport and other sectors who are particularly exposed to unsafe working conditions as a result of the COVID-19 pandemic, as they often live and work together. The trade unions further highlight that health and safety measures for migrant workers on worksites, in housing facilities or in transportation to or from work are not enforced, as they work and live without being able to respect social distancing, without hygiene precautions, and are pressed to work even with COVID-19 symptoms. This resulted in a large number of workers being infected. Furthermore, even if there is sufficient equipment, which is generally not the case, migrant workers often do not have the time to wash hands and keep materials and machines clean as a result of their workload. Referring to its 2019 direct request on the Migration for Employment Convention (Revised), 1949 (No. 97), the Committee further notes that, in its 2019 concluding observations, the UN Human Rights Committee expressed concerns at the growing number of migrant workers, particularly from Poland and Hungary, who are coerced by employment agencies to work under exploitative conditions (CCPR/C/NLD/CO/5, 22 August 2019, paragraph 26). ***The Committee urges the Government to take proactive measures to promote equality of opportunity and treatment for migrant men and women in employment and occupation, in particular by combating exploitation of migrant workers and ensuring safe working conditions. It asks the Government to provide information on any measures and programmes implemented to that end, in particular in order to strengthen labour inspections in sectors employing a large number of migrants, as well as on their impact. Finally, the Committee asks the Government to provide information on the number and nature of cases of discrimination against migrant workers detected by or reported to labour inspectors, the Netherlands Institute for Human Rights or the courts, as well as the sanctions imposed and remedies provided.***

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

# New Zealand

## Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)

The Committee takes note of the supplementary information provided by the Government following the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of Business New Zealand and the New Zealand Council of Trade Unions (NZCTU) communicated with the Government's reports.

*Article 1(b) of the Convention. Work of equal value. Legislative developments.* The Committee previously noted that the Employment Relations Act (ERA) 2000, the Human Rights Act (HRA) 1993, and the Equal Pay Act (EPA) 1972, do not fully reflect the principle of the Convention, since they limit the requirement for equal remuneration for men and women to the same or substantially similar work. It however noted that, following the 2014 landmark decision of the New Zealand Court of Appeal (*Terranova Homes & Care Ltd v. Service and Food Workers' Union Nga Ringa Tota Inc. (CA631/2013[2014]NZCA516) of 28 October 2014*), which concluded that the EPA was not limited to providing for equal pay for the same or similar work, a tripartite Joint Working Group (JWG) was established in 2015 to develop pay equity principles. It previously noted that, following the recommendations made by the JWG, an Employment (Pay Equity and Equal Pay) Bill was introduced to Parliament on 26 July 2017, with the purpose of eliminating and preventing discrimination on the basis of gender in remuneration and other terms and conditions of employment. The Committee previously raised a number of concerns regarding the provisions of the Bill and asked the Government to take steps to ensure that any new legislation fully reflected the principle of the Convention.

The Committee notes the Government's indication, in its report, that the above mentioned Bill subsequently lapsed. The Government indicates that it reconvened the JWG (called the RJWG) in December 2017, which recommended that the pay equity principles be implemented by amending the existing EPA rather than creating a new Act. Following the recommendations made by the RJWG, the Government introduced the Equal Pay Amendment Bill on September 2018. The NZCTU indicates that it raised a number of concerns regarding the amendments but that, in its view, the provisions of the Bill were broad enough to accommodate the concept of «work of equal value». The Government also states that the Bill seek to accommodate the concept of «work of equal value». The Committee welcomes the adoption of the Equal Pay Amendment Act 2020 (2020 No. 45) which entered into force on 6 November 2020. It notes more particularly that the Act provides that an employer must ensure that: (1) there is no differentiation, on the basis of sex, between the rates of remuneration offered and afforded by the employer to employees of the employer who perform the same, or substantially similar, work (section 2AAC(a)); and (2) there is no differentiation, on the basis of sex, between the rates of remuneration offered and afforded by the employer for work that is exclusively or predominantly performed by female employees and the rate of remuneration that would be paid to male employees who have the same, or substantially similar, skills, responsibility, and experience; and who work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort (section 2AAC(b)). The Act defines work that is or was «predominantly performed by females employees» as work that is currently, or that was historically, performed by a workforce of which approximately 60 per cent or more members are female (section 13F(2)).

The Committee notes that the Equal Pay Amendment Act 2020 further: (1) distinguishes between an equal pay claim (in case of alleged violation of section 2AAC(a)), a pay equity claim (in case of alleged violation of section 2AAC(b)) and an unlawful discrimination claim (in case of discrimination based on sex regarding other terms and conditions of employment than remuneration, pursuant to section 2A; (2) offers the employee who may allege one of these three kinds of claims a choice of proceedings between a claim under the EPA, a complaint under the HRA 1993 or an application to the Authority for resolution of a personal grievance under the ERA 2000 (section 2B); while (3) providing that in case of a pay equity claim, instead of having to go through the courts, employees can use a more simple and accessible pay equity bargaining process which may lead to a pay equity settlement. The Committee notes that pay equity claims can be raised by an individual employee, a union on behalf of one or more employees, or multiple unions acting jointly on behalf of the members of each union, and that union-raised claims can be raised with multiple employers. Copies of pay equity settlements shall be delivered to the Ministry of Business, Innovation and Employment (MBIE) for statistical and analytical purposes (sections 13A to 13ZZG). In that regard, the Committee notes that, in Business New Zealand's view, this is a better course to take than having the parties follow the litigation path which has too often resulted in a long drawn out process and if, in time, the plaintiffs are successful, damaging consequences for employers.

While acknowledging the efforts made by the Government to introduce in its national legislation new provisions defining "pay equity" and providing for a simplified pay equity bargaining process, the Committee notes that the Government did not seize this opportunity to take into consideration the concerns previously expressed by the Committee. Noting the Government's statement that the Equal Pay

Amendment Act 2020 reflects the principle of the Convention, the Committee wishes to draw the Government's attention to the fact that the Act continues to restrict equal rates of remuneration to: (1) ''the same, or substantially similar, work'' (both in the case of an equal pay claim and a pay equity claim, e.g. sections 2AAC(a), 13B, 13E, 13ZE) ; or (2) ''the same, or substantially similar, skills, responsibility, and experience'' and ''work under the same, or substantially similar, conditions, and with the same, or substantially similar, degrees of effort'' (e.g. sections 2AAC(b) and 13ZE). It further notes that the provisions of the Act limit the scope of comparison to ''the employer of the employee'' (for an equal pay claim, section 2AAC(a)) or to ''another employee of the same employer'' (for a pay equity claim, section 13B), except when a union raises a multi-employer pay equity claim (sections 13B and 13E(3)). While noting the Government's statement that it will publish guidance for interpreting the meaning of ''substantially similar'' skills, responsibilities, working conditions and/or degrees of effort, the Committee is bound to repeat that the concept of ''work of equal value'' that lies at the heart of the Convention permits a broad scope of comparison, including but going beyond equal remuneration for ''equal'', ''the same'' or ''similar'' work, and also encompasses work that is of an entirely *different* nature which is nevertheless of equal *value*. It follows that the jobs to be compared on the basis of objective factors (such as skills, efforts, responsibilities, conditions of work, etc.) mav involve *different* types of skills, responsibilities or conditions of work, that can nevertheless be of equal *value* in its totality. As such, the principle of the Convention is not equivalent to the concept of ''pay equity'' as enshrined in the Equal Amendment Act 2020, nor is it reflected fully in the provision relating to ''equal pay for the same, or substantially similar work'' or for ''the same, or substantially similar'' skills, responsibilities, working conditions and/or degrees of effort. Furthermore, the Committee recalls that the application of the principle of equal remuneration for men and women for work of equal value should not be limited to comparisons between men and women in the same company, as it allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers (see General Survey on the fundamental Conventions, 2012, paragraphs 676–679 and 697-698). Finally, the Committee notes that, in Business New Zealand's view, the aim of the Convention at the time of its adoption was to ensure that women received the same pay as men, and not that they should be paid what was paid to men doing some entirely different job. Business New Zealand adds that rates of pay are far better left to the market to determine. In that regard, the Committee wishes to recall that while ''value'' is not defined in the Convention, it refers to the worth of a job for the purpose of computing remuneration. ''Value'' in the context of the Convention indicates that something other than market forces should be used to ensure the application of the principle, as market forces may be inherently gender-based (see the 2012 General Survey, paragraph 674). ***The Committee therefore asks the Government to provide information on any steps taken or envisaged to give full legislative expression to the principle of the Convention with a view to ensuring that when determining whether two jobs are of equal value: (i) the overall value of the job is considered without limiting the comparison to «the same or substantially similar» work, conditions, skills, responsibility, experience and/or degrees of effort, and the definition allows for jobs of an entirely different nature to be compared free from gender bias; and (ii) the scope of comparison goes beyond the same company. It asks the Government to provide information on the application of the Equal Pay Amendment Act 2020 in practice, including on the number and nature of pay equality settlements agreed on, as well as a copy of the guidance provided by the Government for interpreting the Act. The Committee also asks the Government to provide information on any judicial or administrative decisions relating to the principle of the Convention, as well as on the manner in which it is ensured that when applying the Equal Pay Act, the Employment Relations Act and the Human Rights Act, the broader concept of work of equal value enshrined in the Convention is taken into account.***

*Occupational gender segregation and pay equity settlements in the public sector.* The Committee previously noted the need for measures to address the undervaluation of work performed by women in the care sector, as well as in other sectors which predominantly employ women, including special education support and social work. The Committee takes note of the adoption of the Public Service Act 2020 (2020 No. 40), and notes more particularly that sections 80 to 84 of the Act, as amended by the Equal Pay Amendment Act 2020, regulate pay equity claims and the pay equity bargaining process in the public service. In that regard, it notes the NZCTU's indication that it supports the introduction of pay equity claims in the public sector and is involved in tripartite arrangements to oversee and assist in resolving these claims. As regards pay equity settlements in the public sector, the Committee previously noted that the Care and Support Workers (Pay Equity) Settlement Act 2017 specifies minimum hourly wage rates payable by employers with a view to redress past undervaluation of care and support work, which is mainly carried out by women. It notes the Government's statement that, as a result of the settlement which applies to more than 55,000 workers, home care and disability sector workers received pay rises of between 15 and 50 per cent depending on their qualifications and experience. It further notes that, while mental health and addiction support workers were excluded from the settlement, the Government together with trade unions and employers agreed in July 2018 to extend the settlement to those workers, who are predominantly women. In that regard, the Committee notes that the Support Workers (Pay Equity) Settlements Amendment Act 2020 came into force on 7 August 2020, now covering mental health and

addiction support workers. Regarding pay equity claims lodged by the education support workers employed by the Ministry of Education, and by the statutory social workers employed by the Ministry of Children, the Committee notes the Government's statement that both pay equity claims were settled in 2018 for these workers who have been subject to historic gender-based undervaluation, thus agreeing on an increase of their minimum hourly rate. The Committee welcomes the pay equity settlements reached in public sector occupations which predominantly employ women. It notes that the Government adds that seven pay equity claims from three unions are ongoing, covering approximately 62,000 employees in four occupational groups in the public health sector (District Health Boards - DHB) where women are predominantly employed, namely nursing, midwifery, clerical and allied health and technical roles. It notes that according to the DHB Employed Workforce Quarterly Review, at the end of 2018, women represented about 89 per cent of DHB nurses; 78 per cent of corporate, clerical and other staff; and 81 per cent of DHB allied and scientific staff. The Committee notes that Business New Zealand again highlights that most women seeking pay equity settlements work in the public sector, among others as nurses or teachers, where the issue does not relate to discrimination but funding availability. Business New Zealand adds that some jobs are less well-paid than others but that this will always be the case and often reflects the nature of the industry, and that arbitrary increases, through pay equity settlements with no increase in productivity, have inevitable adverse effects: some employees lose their jobs and some businesses shut, because the increase is unaffordable. The Committee notes that the Government disagrees with the suggestion that pay equity settlements represent general wage claims, rather than pay equity claims. With regard to measures to address occupational gender segregation and its impact on the gender pay gap, the Committee refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). ***In light of the absence of legislation fully reflecting the principle of the Convention, the Committee asks the Government to provide information on the measures taken to ensure that pay equity settlements address the issue of undervaluation of work performed by women in line with the principle of equal remuneration between men and women for work of equal value. It further asks the Government to provide information on the pending pay equity claims in the public sector, in particular in the health sector. The Committee also asks the Government to indicate any other measures taken to address the undervaluation of work performed by women in sectors in which they are predominantly employed.***

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

## Nicaragua

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)

The Committee notes the supplementary information provided by the Government on matters raised in the direct request addressed to it and also reiterates the content of its observation adopted in 2019, which is reproduced below.

*Article 1(b) of the Convention. Legislation.* In its previous comments, the Committee requested the Government to harmonize its legislation, Act No. 648 of 2008 on equal rights and opportunities, in order to incorporate fully the principle of equal remuneration for men and women workers for work of equal value, as enshrined in the Convention. The Committee notes that, in its report, the Government provides detailed information on the legislation in force, particularly on Act No. 648 of 2008, but that it does not provide any information on the harmonization of the Act with the principle enshrined in the Convention. The Committee recalls that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. The concept of "work of equal value" is fundamental to tackling occupational gender segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 673). ***Recalling the importance of ensuring that men and women have a clear legal basis for asserting their right to equal pay for work of equal value vis-à-vis their employers and the competent authorities, whether their claim is on the basis of comparable data drawn from their own employer or from other comparable work outside their enterprise, the Committee urges the Government to take action in order to harmonize Act No. 648 of 2008 on equal rights and opportunities, to incorporate fully the principle of equal remuneration for men and women workers for work of equal value, as enshrined in the Convention and to provide information on progress in this regard.***

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

## Nigeria

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1974)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Legislation.* The Committee previously noted that, for more than ten years, the Government has been indicating that the Labour Standards Bill of 2006, which would provide for equal remuneration for men and women for work of equal value, is yet to be adopted. It notes the Government's repeated statement, in its report,

that a provision covering the principle of equal remuneration for men and women for work of equal value has been incorporated in the Bill (section 11.2). The Government adds that, in any case, the Constitution provides for equal remuneration for work of equal value. The Committee notes, however, that article 17(3)(e) of the Constitution provides for "equal pay for *equal* work without discrimination on account of sex, or any other ground". In this regard, the Committee wishes to recall that the wording of such provision unduly restricts the scope of comparison of jobs performed by men and women and does not reflect the concept of "work of equal value" as provided for under the Convention, which is fundamental to tackling occupational gender segregation in the labour market, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see General Survey on fundamental Conventions, 2012, paragraphs 672–675). The Committee notes with ***deep regret*** that the Government does not provide information on any progress made in the adoption of the Labour Standards Bill. It notes that, in concluding observations, the United Nations (UN) Human Rights Committee (UNHRC) and the UN Committee on the Elimination of Discrimination against Women (CEDAW) respectively expressed concern about the delay in adopting the above-mentioned bill and recommended that the Government expedite the adoption of pending laws (CCPR/C/NGA/CO/2, 29 August 2019 and CEDAW/C/NGA/CO/7-8, 24 July 2017). ***The Committee therefore urges the Government to provide updated information on the current status of the adoption of the Labour Standards Bill. It trusts that real progress will be made soon in adopting legislation that fully reflects the principle of equal remuneration for men and women for work of equal value in its national legislation, allowing for the comparison not only of equal, the same or similar work but also of work of an entirely different nature.***

*Article 2. Gender wage gap.* The Committee notes the Government's statement that efforts are being made to obtain the statistical information pertinent to evaluate the progress made in the application of the principle of the Convention. In this regard, it recalls that appropriate data and statistics are crucial in determining the nature, extent and causes of unequal remuneration, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and to make any necessary adjustments (see General Survey on the fundamental Conventions, 2012, paragraph 891). However, the Committee observes from the 2019 Government's report under the national-level review of implementation of the Beijing Declaration, that the gender participation gap in labour force participation is still quite significant with an estimate of less than 25 per cent of women making up the country's formal labour force (NBS, 2018). In this report, the Government acknowledges that, despite women's contribution to the economy and to combating poverty through both remunerated and unremunerated work at home, in the community and in the workplace, several gender specific disparities exist as far as the country's economic indices are concerned, in particular as regard women's access to means of production and provides some concrete examples: (i) Nigerian labour markets are gendered, as a majority of those in formal employment are men. NBS 2018 data confirm that only 32,5 per cent of women were employed in the (non-agricultural) private sector; (ii) women run only 20 per cent of enterprises in the formal sector and 23 per cent of these enterprises are in the retail sector; women make up 37 per cent of the total work force in the garment industry, and they are very poorly represented in the wood, metals, chemicals, construction, and transport industries ; (iii) limited opportunities for employment and a rather small medium-scale enterprise sector have meant that micro or informal enterprise has become a default strategy for many Nigerians; (iv) data show that men are twice as likely to secure finance compared to women. In 2007, for example, about 64 per cent disbursed loans went to male applicants. Some of the reasons behind this include stringent prequalification criteria and a disconnect between available opportunities and women in the rural areas; (v) women's access to land, a key productive asset is limited: according to the Government's report, although the Nigeria Land Administration Act is egalitarian on paper, further work is required to operationalize the Act as the predominant practice is patrilineal inheritance (from father to son); (vi) women are significantly under-represented in secure wage employment in both the private and public sectors; and those who have formal sector jobs are constrained by the reproductive roles they play. As a result, many women occupy low-level posts that offer them the flexibility they need to manage their households while working in the formal economy.

The Committee notes further that, according to the Global Gender Gap Report from the World Economic Forum, in 2018 the country gender wage gap was high, being estimated at 35 per cent. In that respect, the Committee observes that, in its concluding observations, the CEDAW was concerned about the lack of information on the activities of labour inspectors to investigate the alleged gender wage gap, especially in the private sector (CEDAW/C/NGA/CO/7-8, 24 July 2017, paragraph 35). ***In light of the absence of legislation that fully reflects the principle of the Convention and the persistence of a significant gender pay gap, the Committee urges the Government to strengthen its efforts to take proactive measures, including in collaboration with employers' and workers' organizations, to raise awareness, make assessments, and promote and enforce the application of the provisions of the Convention in practice, in particular among workers, employers, their respective organizations and law enforcement officials. It further asks the Government to provide information on the measures taken to address the underlying causes of this persistent gender pay gap, identified in its report under the national-level review of implementation of the Beijing Declaration, such as traditional practices and gender stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family, and to promote women's access to a wider range of jobs with career prospects and higher pay. Noting that the importance of micro-enterprises as the main source of income makes it a strategic area for the empowerment of women, the Committee asks the Government to indicate the concrete measures adopted to promote women's economic empowerment and entrepreneurship, as well as the results thereof. Finally, the Committee asks the Government to provide updated statistical information on the earnings of men and women, disaggregated by economic sector and occupation.***

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

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

## Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Legislation.* The Committee previously noted that, for more than ten years, the Government has been indicating that the Labour Standards Bill of 2006, which includes provisions on equality of opportunity and treatment, is yet to be adopted. It notes the Government's repeated statement, in its report, that a provision covering the principle of equality of opportunity and treatment in employment and occupation, is incorporated in the Bill. The Committee notes with ***deep regret*** that the Government does not provide information on any progress made in the adoption of the Labour Standards Bill, nor on the adoption of the Gender and Equal Opportunities Bill of 2016, which would provide protection against discrimination based on sex, age and disability; promote gender equality; and provide for special temporary measures, including in employment and occupation. It notes that, in their concluding observations, the United Nations (UN) Human Rights Committee (HRC) and the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about the delay in adopting the two above-mentioned bills and recommended that the Government expedite the adoption of pending laws and adopt comprehensive anti-discrimination legislation that: (i) includes a comprehensive list of prohibited grounds of discrimination, including race, colour, sex, religion, political opinion, and national or social origin; (ii) covers direct and indirect discrimination; and (iii) provides for effective remedies, including judicial remedies (CCPR/C/NGA/CO/2, 29 August 2019, paragraph 17, and CEDAW/C/NGA/CO/7-8, 24 July 2017, paragraphs 9, 10 and 35(b)). ***The Committee therefore urges the Government to provide updated information on the current status of the adoption of the Labour Standards Bill and Gender and Equal Opportunities Bill. It trusts that real progress will be made soon in adopting legislation that explicitly prohibits direct and indirect discrimination based on at least all the grounds set out in Article 1(1)(a) of the Convention concerning all stages of the employment process, while also ensuring that the additional grounds already enumerated in its national legislation are preserved in any new legislation. In the meantime, the Committee again stresses the importance of enacting provisions to prevent and prohibit sexual harassment in the workplace, which is a serious manifestation of sex discrimination, and asks the Government to provide information on any progress made in this regard.***

*Articles 1 and 3. Discrimination based on sex with regard to employment in the police force.* For many years, the Committee has been drawing the Government's attention to the fact that sections 118 to 128 of the Police Regulations of 1968, which provide for special recruitment requirements and conditions of service applying to women, are discriminatory on the basis of sex and thus incompatible with the Convention. More particularly, the Committee underlined that the criteria and provisions relating to pregnancy and marital status contained in sections 118, 124 and 127 constitute direct discrimination, and that sections 121, 122 and 123 on duties that women police officers could perform were likely to go beyond what is permitted under *Article 1(2)* of the Convention. The Committee also noted that legal provisions establishing common height for admission to the police were likely to constitute indirect discrimination against women. While noting the Government's general indication that this issue will be conveyed to the Police Service Commission for review, the Committee recalls that women should have the right to pursue freely any job or profession and that exclusions or preferences in respect of a particular job in the context of *Article 1(2)* of the Convention, should be determined objectively without reliance on stereotypes and negative prejudices about men's and women's roles (see General Survey of 2012 on fundamental Conventions, paragraph 788). It further notes that in its concluding observations, the CEDAW remained concerned about: (i) article 42(3) of the Constitution, which validates any law that may impose discriminatory restrictions with respect to an appointment to the police force; as well as (ii) the above-mentioned discriminatory provisions of the Police Act and Regulations (CEDAW/C/NGA/CO/7-8, 24 July 2017, paragraph 11). ***Recalling once again that each member State for which this Convention is in force, in accordance with Article 3(c), is under the obligation to repeal any statutory provisions which are contrary to equality of opportunity and treatment, the Committee urges the Government to bring its legislation into conformity with the Convention without delay, and to indicate any measures taken in this regard to effectively ensure equality of opportunity and treatment of women in the police force. It asks the Government, once again, to provide a copy of the Gender Policy for the Nigerian Police, as well as specific information on its implementation and impact, including any measures to address stereotypes and negative prejudices about the role of men and women in the labour market.***

*Articles 2 and 3. Equality of opportunity for men and women.* The Committee previously noted that the National Gender Policy of 2006 was being reviewed and that, while no further information had been provided on training activities by the National Directorate for Employment (NDE) and the Technical Vocational Education Training (TVET) programme for rural women and women with disabilities, the Government referred to the "Community Services, Women and Youth Employment" (CSWYE) project. This project was being implemented to provide temporary employment opportunities in cleaning and light construction work through community services to unemployed women, youth, and persons with disabilities, while ensuring a level of guaranteed income for up to one year. The Committee notes with ***regret*** the lack of information provided by the Government on the measures taken to promote equal opportunities for men and women in employment and occupation**.** However, the Committee notes, from the 2019 Government's report under the national-level review of implementation of the Beijing Declaration, that the Government acknowledges that, although there have been major achievements when it comes to progress with gender equality and the empowerment of women, there are still several challenges, such as for example: gender stereotypes, social norms and cultural barriers; lack of enough up-to date gender disaggregated data; addressing the intersectional nature of gender inequality; inadequate funding to implement programmes and policies; insecurity, gender violence and conflict; non domestication of major treaties and poor implementation of some of the sector specific laws and policies (such as the National Gender Policy). In addition, the Committee notes that, in its concluding observations, the CEDAW was concerned that: (i) the CSWYE and "Growing Girls and Women in Nigeria" projects lack a legislative basis that would ensure their enforcement; (ii) there are no mechanisms in place to track the progress of the CSWYE project; (iii) there is no information on plans to expand that project to rural areas, where the majority of women live; (iv) women own less than 7.2 per cent of the total land mass and their land rights in rural areas are not guaranteed; and (v) rural women continue to face physical, economic and other barriers in gaining access, inter alia, to education and employment (CEDAW/C/NGA/CO/7-8, 24 July 2017, paragraphs 19 and 41). The Committee notes that, in the framework of the Universal Periodic Review (UPR), several UN bodies and organizations expressed concern about school dropout by many women and girls, in particular in the North-East region owing to the Boko Haram insurgency (A/HRC/WG.6/31/NGA/2, 27 August 2018, paragraphs 60–62). In this regard, the Committee notes, from the 2018 Statistical Report on Women and Men in Nigeria, published by the National Bureau of Statistics (NBS), that the enrolment rate of school-aged girls in primary education decreased from 48.6

per cent in 2014 to 47.5 per cent in 2016, and the completion rates for girls in primary, junior and senior secondary schools in 2016 were 64.8 per cent, 38.9 per cent and 28.7 per cent respectively. It notes that the literacy rate among girls and women aged between 15 and 24 years remained low at 59.3 per cent in 2016, compared to 70.9 per cent for men. While observing that the report of the NBS does not contain information on the situation of women in the private sector, the Committee notes that women represented only 44.9 per cent of the state civil service's employees in 2015 and were mostly concentrated in lower grades, their situation being similar in federal ministries, departments and agencies. Noting from the NBS statistical report that women are often disadvantaged in access to employment opportunities and in conditions of work as compared to men and that employment opportunities of many women are also limited as a result of their family responsibilities, the Committee notes with ***concern***, from the 2017 Unemployment/Under Employment Report of the NBS, that the number of employed women decreased from 2017 to 2018 while their unemployment rate increased by 5.4 percentage points. The Committee notes that, in its concluding observations, the HRC expressed concern about discrimination against women in access to justice, education, employment and enjoyment of land and property rights persists both in law and in practice (CCPR/C/NGA/CO/2, 29 August 2019, paragraph 16). It also notes that, in its concluding observations, the CEDAW was concerned about the persistence of harmful practices and discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society, which perpetuate women's subordination in the private and public spheres (CEDAW/C/NGA/CO/7-8, 24 July 2017, paragraph 21). The Committee notes that the Human Rights Council, in the context of the UPR, specifically recommended that the Government: (i) strengthen educational opportunities for girls; (ii) continue efforts to facilitate women's economic empowerment and access to economic opportunities, particularly in rural areas; (iii) prevent violence and discrimination against women; and (iv) intensify efforts to enable women to gain access to justice by increasing gender awareness among judges and other court personnel (A/HRC/40/7, 26 December 2018, paragraph 148). ***In light of the absence of legislation that fully reflects the principles of the Convention, the Committee urges the Government to strengthen its efforts to take proactive measures, including in collaboration with employers' and workers' organizations, to raise awareness, make assessments, and promote and enforce the application of the provisions of the Convention in practice, in particular among workers, employers, their respective organizations and law enforcement officials. It further urges the Government to provide information on the measures taken, including in the framework of the revision of the National Gender Policy of 2006, to improve equality of opportunity and treatment for men and women in employment and occupation, in particular in rural areas, by effectively enhancing women's economic empowerment and access to education and employment, including decision-making positions, as well as by improving the school attendance rate for women and girls while reducing their early dropout from school. The Committee asks the Government to provide statistical information on the participation of men and women in education, training, employment and occupation, disaggregated by occupational categories and positions, both in the public and private sectors, as well as in the informal economy.***

*Discrimination based on race, colour, religion, national extraction or social origin. Ethnic and religious minorities.* The Committee previously noted that article 42(1)(a) of the Constitution – which provides that a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason that he or she is such a person, be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject – only protects citizens and does not contain an explicit prohibition of discrimination in employment and occupation. Having noted that Nigeria is an ethnically and linguistically diverse society, the Committee has repeatedly requested the Government to provide information on the application of the Convention with respect to the different ethnic and religious groups in the country. It notes with ***regret*** that the Government once again provides no information on this point, nor regarding discrimination in employment and occupation resulting from the practice of ascribing certain occupations and social status to a person on the basis of that person's descent. The Committee notes with ***concern*** that, in its concluding observations, the HRC was concerned about: (i) allegations of discrimination against religious minorities, including discrimination against Christians in the northern states in terms of access to education and employment; as well as (ii) reports of discrimination against certain ethnic minorities in various aspects of their lives, including access to education and employment due to the differential access of indigenous persons and settlers, and segregation from society of some groups such as the Osu (CCPR/C/NGA/CO/2, 29 August 2019, paragraphs 44 and 50). ***In light of the absence of national legislation explicitly prohibiting direct and indirect discrimination on all the grounds set out in Article 1(1)(a) of the Convention, concerning all stages of the employment process, the Committee urges the Government to provide information on any measures taken, in law and in practice, to address discrimination in employment and occupation faced by ethnic and religious minorities, including nomadic groups and Christians in the northern states. It asks the Government to provide information on any affirmative action and awareness-raising measures undertaken to promote equality of opportunity and treatment in employment and occupation for ethnic and religious minorities, as well as on any legislative developments relevant to the rights of minorities.***

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. ***The***

***Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

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

## Papua New Guinea

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation.* Referring to its previous comments regarding legal protection against discrimination on the basis of the grounds set out in *Article 1(1)(a)* of the Convention, the Committee welcomes the Government's indication in its report that section 8 of the final draft of the Industrial Relations Bill prohibits direct and indirect discrimination on the grounds of race, colour, sex, religion, pregnancy, political opinion, ethnic origin, national extraction or social origin, against an employee or applicant for employment or in any employment policy or practice. The Government adds that further consultations were held between the National Tripartite Consultative Council (NTCC) and the State Solicitor's Office in order to make final amendments to the Bill which was anticipated to be enacted in 2015. The Committee notes that the Government does not provide information on progress made concerning the review of the Employment Act, 1978, including the revision of sections 97–100 which prohibit only sex-based discrimination against women. It notes that the Decent Work Country Programme for 2013–15, which has been extended until 2017, has set as a priority the completion of the Industrial Relations Bill, and revisions of the Employment Act through the delivery of a new Employment Relations Bill. ***While noting that none of these Bills have been enacted to date, the Committee trusts that the Industrial Relations Bill will be adopted in the near future, and requests the Government to provide information on progress made in this regard. It also requests the Government to provide information on progress made concerning the review of the Employment Act 1978, and in particular sections 97–100, in collaboration with workers' and employers' organizations, with a view to aligning the provisions on discrimination with the Industrial Relations Bill and to bring them into conformity with the Convention.***

*Discrimination on the ground of sex in the public service.* For over 15 years, the Committee has been referring to the discriminatory impact of section 36(2)(c)(iv) of the Public Services (Management) Act 1995, which allows calls for candidates to specify that "only males or females will be appointed, promoted or transferred in particular proportions", and section 20.64 of General Order No. 20 as well as section 137 of the Teaching Services Act 1988, which provide that a female official or female teacher is only entitled to certain allowances for their husband and children if she is the breadwinner. A female officer or female teacher is considered to be the breadwinner if she is single or divorced, or if her spouse is medically infirm, a student or certified unemployed. The Committee notes with ***deep regret*** that despite the adoption of a new Public Services (Management) Act in 2014, which repealed the Act of 1995, section 36(2)(c)(iv) referred to above has been maintained. It however notes that the National Public Service Policy on Gender Equity and Social Inclusion (GESI) adopted in 2013, and its action plan, set as priority action the revision of employment conditions in order to ensure equal access and employment conditions for all individuals regardless of gender. ***Noting the discriminatory impact of section 36(2)(c)(iv) of the Public Services (Management) Act 2014, section 20.64 of General Order No. 20 and section 137 of the Teaching Services Act 1988, the Committee urges the Government to take expeditious steps to review and amend these laws in order to bring it in line with the requirements of the Convention. It also requests the Government to provide information on any measures taken as a result of the GESI policy and action plan and any progress made to ensure equality of opportunity and treatment between men and women in the public service.***

*Discrimination against certain ethnic groups*. Referring to its previous comments concerning the allegations made by the International Trade Union Confederation (ITUC) on the increased violence against Asian workers and entrepreneurs, who were blamed for "taking away employment opportunities", the Committee notes that the Government does not provide any information in this regard. ***The Committee once again requests the Government to investigate the allegations of discrimination against Asian workers and entrepreneurs including incidents of violence and to provide information on the results of such investigations. It also requests the Government to provide information on concrete measures taken to ensure protection in the context of employment and occupation, against discrimination on the grounds of race, colour, or national extraction, as well as on any measures taken or envisaged to promote equality of opportunity and treatment of members of different ethnic groups in employment and occupation.***

*Article 2. National equality policy.* The Committee notes that the Government still does not provide information on a national policy specifically addressing discrimination on all the grounds enumerated in the Convention. With regard to discrimination based on sex, the Committee notes that some sections of the National Public Service Policy on Gender Equity and Social Inclusion of 2013 and the National Policy for Women and Gender Equality for 2011–15 seem to address the issue of gender equality in employment and occupation. The Committee recalls that, even though the relative importance of the problems relating to each of the grounds may differ for each country, when reviewing the situation and deciding on the measures to be taken, it is essential that attention be given to all the grounds of discrimination set out in the Convention in implementing the national equality policy, which presupposes the adoption of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes and awareness raising (2012 General

Survey on the fundamental Conventions, paragraphs 848–849). ***The Committee again urges the Government to provide full particulars on the specific measures taken or envisaged, in collaboration with workers' and employers' organizations, to implement a national policy aimed at ensuring and promoting equality of opportunity and treatment in employment and occupation on all the grounds enumerated in the Convention.***

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

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

## Republic of Moldova

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1996)

*Article 5 of the Convention. Special measures of protection and assistance. Restrictions on the employment of women.* In its previous comments, the Committee hoped that restrictions to women's work would be strictly limited to maternity protection. The Committee notes with ***satisfaction*** that section 248 of the Labour Code of 2003, as revised in 2020, limits the prohibition on working in underground works to pregnant women, women who have recently given birth and women who breastfeed, as well as in activities that present risks to their safety or health or which may have an impact on their pregnancy or lactation. The Committee emphasizes that any protective measure applicable to the employment of women has to be rigorously proportional to the nature and scope of the protection sought and be limited to maternity protection if it is to be compatible with the principle of equality. It also wishes to emphasize that provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, and should be established on the basis of an evaluation showing that there exist specific risks for the health of women and men. ***The Committee asks the Government to provide information on the implementation in practice of section 248 of the Labour Code, in particular regarding the criteria for determining which activities present risks to pregnant women and women who have recently given birth and women who breastfeed, and the measures taken to ensure that such criteria are compatible with the principle of equality between women and men.***

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

## Rwanda

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1980)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Congress of Labour and Brotherhood of Rwanda (COTRAF-RWANDA) received on 24 June 2018. ***The Committee requests the Government to provide its comments in this respect.***

*Articles 1(b) and 2 of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee recalls that the definition of the expression "work of equal value" which appears in section 1.9 of Law regulating Labour No. 13/2009 of 27 May 2009 refers only to "similar work" and is therefore too narrow to fully implement the principle of the Convention. It also recalls that this law does not contain any substantial provisions prescribing equal remuneration for men and women for work of equal value and the Constitution only refers to "the right to equal wage for equal work". The Committee notes that the Government continues to repeat that, in practice, there is no discrimination between men and women with regard to remuneration, and that full legislative expression will be given to the principle of equal remuneration for men and women for work of equal value in the ongoing revision process of Law No. 13/2009. The Government also indicates that the revision will also address the linguistic differences between the Kinyarwanda and English versions of section 12. The Committee once again refers to paragraphs 672–679 of its General Survey of 2012 on the fundamental Conventions explaining the meaning of the concept of "work of equal value" which not only covers "equal", the "same" or "similar" work but also addresses situations where men and women perform different work that is nevertheless of equal value. ***Noting that no progress has been made in this respect for a number of years, the Committee urges the Government to take the necessary steps without delay to amend Law No. 13/2009 of 27 May 2009 regulating Labour, including sections 1.9 and 12, so as to give full legislative effect to the principle of equal remuneration for men and women for work of equal value.***

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

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

## Saint Lucia

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has

not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1(a) of the Convention. Definition of remuneration.* The Committee recalls that the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, contains no definition of the term "remuneration". The Committee notes the adoption of the Labour Code (Amendment) Act No. 6 of 2011, which amends section 95 of the Labour Code of 2006 to include the definition of "total remuneration" as "all basic wages which the employee is paid or is entitled to be paid by his or her employer in respect of labour performed or services rendered by him or her for his or her employer during that period of employment". The Committee notes that section 2 of the Labour Code, continues to exclude overtime payments, commissions, service charges, lodging, holiday pay and other allowances from the definition of wages. The Committee recalls that the Convention sets out a very broad definition of "remuneration" in *Article 1(a)* which includes not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment" (see 2012 General Survey on the fundamental Conventions, paragraph 686). ***The Committee asks the Government to take the necessary measures to further amend section 95 of the Labour Code in order to ensure that at least for the purposes of the application of the principle of the Convention the concept of remuneration covers not only the basic wages, but also any additional benefit or allowance arising out of the worker's employment.***

*Different wages and benefits for women and men.* The Committee notes with regret that despite the Government's previous announcement in this respect, the Labour Code (Amendment) Act No. 6 of 2011 does not repeal the existing laws and regulations establishing differential wage rates for men and women, nor does it revoke the Contract of Service Act which provides for different ages for men and women with respect to entitlement to severance pay. ***The Committee urges the Government to take measures without delay to ensure that all laws and regulations are repealed which contain differential wages for men and women, as well as the Contract of Service Act, which provides for different ages for men and women with respect to entitlement to severance pay. The Committee requests the Government to provide information on any development in this regard.***

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

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

## Saint Vincent and the Grenadines

### Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1 of the Convention. Work of equal value.* The Committee notes with regret the Government's indication that there has been no progress regarding the matter of amending section 3(1) of the Equal Pay Act of 1994, which provides for "equal pay for equal work" and is therefore not in conformity with the principle of equal remuneration for men and women for work of equal value. ***The Committee requests the Government once again to take steps to amend section 3(1) of the Equal Pay Act without further delay in order to ensure that the legislation provides for equal remuneration for men and women for work of equal value, as specified in the Convention; and to provide information on any progress achieved in this regard.***

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

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

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

*Article 1(1)(a) of the Convention. Legislative protection against discrimination.* The Committee recalls that article 13 of the Constitution Order of 1979 contains a general prohibition against discrimination on the grounds of sex, race, place of origin, political opinions, colour or creed. For a number of years, the Committee has been drawing the Government's attention to the fact that article 13 of the Constitution: (1) does not refer to the grounds of national extraction and social origin listed in *Article 1(1)(a)* of the Convention; and (2) excludes non-citizens from its scope of application, while the Convention covers both nationals and non-nationals. The Committee has further highlighted the lack of any specific legislation prohibiting discrimination in employment and occupation and recalled that constitutional provisions, while important, have generally not proven to be sufficient to address specific cases of discrimination in employment and occupation, and a more detailed legislative framework is required (see General Survey of 2012 on the fundamental Conventions, paragraph 851). Referring to its previous comments where it noted the Government's intention to adopt a law similar to the Caribbean Community (CARICOM) Model Law on Equal Opportunity and Treatment in Employment and Occupation, the Committee notes with ***regret*** the Government's statement, in its report, that no further action has been taken in that regard. As regards section 27 of the Education Act (Cap 202) of 2006 which prohibits discrimination in admission to an educational institution or schools on a certain number of grounds, the Committee notes the Government's indication that social status is similar to social origin, but that there has been no judicial

decision with respect to the meaning of social status. The Government adds that draft amendments to the Protection of Employment Act of 2003 have been made to prohibit termination of employment on the grounds of race, colour, gender, marital status, social status, sexual orientation, pregnancy, religion, political opinion or affiliation, nationality, or social or indigenous origin of the employee. Noting that such amendments are awaiting the approval of the competent authority, the Committee wishes to recall that the principle of equality of opportunity and treatment should apply to all aspects of employment and occupation. Under *Article 1(3)* of the Convention "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment (see General survey of 2012, paragraph 749). The Committee notes that, in their concluding observations, several United Nations treaty bodies recently expressed concerns about: (1) the fact that article 13 of the Constitution is not applicable to non-citizens; and (2) the lack of provisions specifically prohibiting discrimination in employment and occupation (CCPR/C/VCT/CO/2/Add.1, 9 May 2019, paragraph 8; and CMW/C/VCT/CO/1, 17 May 2018, paragraph 26). ***In light of the persistent lack of progress made in the making of legislation that fully reflects the provisions of the Convention, the Committee urges the Government to take the necessary steps without delay to ensure an effective legislative framework that explicitly prohibits direct and indirect discrimination based on at least all the grounds enumerated in Article 1(1)(a) of the Convention (race, colour, sex, religion, political opinion, national extraction and social origin), concerning all stages of the employment process and covering all workers, both nationals and non-nationals. It asks the Government to provide information on any progress made in this regard. The Committee recalls that the Government can avail itself of the technical assistance of the Office in this regard.***

*Articles 2 and 3(a). Lack of a national equality policy.* Referring to its previous comments concerning the lack of a national policy promoting equality of opportunity and treatment in respect of employment and occupation, the Committee notes the Government's repeated statement that the competent authority has not developed a national equality policy yet. The Government however states that appropriate steps are being taken to formulate such a policy in a near future. In that regard, the Committee draws the Government's attention to the fact that the primary obligation of ratifying States is to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof (see General Survey of 2012, paragraph 841). ***In light of the absence of legislation that fully reflects the principles of the Convention, the Committee urges the Government to take the necessary measures to develop and implement a national policy promoting equality of opportunity and treatment in respect of employment and occupation, in order to effectively contribute to the elimination of direct and indirect discrimination and the promotion of equality of opportunity and treatment for all categories of workers. It asks the Government to provide information on any progress made in that regard.***

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

## Tajikistan

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC), which were received on 11 September 2019.

#### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

*Article 2 of the Convention. Equality of opportunity and treatment between men and women.* The Committee notes the discussion in the Committee on the Application of Standards (CAS) of the International Labour Conference, at its 108th Session (June 2019), on the application of the Convention, and the conclusions adopted. The conclusions of the CAS called upon the Government to: (1) report on the concrete measures taken to ensure that direct and indirect discrimination on all grounds is prohibited in law and in practice; and (2) provide without delay information on the implementation in practice of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005 (Law on State Guarantees of 2005).

The Committee welcomes the detailed information provided by the Government in its report regarding the legislative framework and the policies and programmes developed and implemented with respect to equality of opportunity and treatment between men and women. The Committee notes, in particular, that the Government acknowledges that gender equality cannot be achieved if laws and

policies are not implemented in practice and indirect discrimination persists. The Government adds that in order to detect indirect discrimination the country's legislation in this area needs to be improved and the first priority is to amend the national legislation. It also indicates that to improve policy to ensure de facto gender equality, the National Development Strategy for 2030 provides for the following measures: (1) improving legislation in order to realize the State guarantees of creating equal opportunities for women and men; (2) developing institutional mechanisms to introduce national and international obligations to ensure gender equality and expand women's opportunities in sectoral policies; (3) activating mechanisms for the literacy and social inclusion of women, including rural women; (4) boosting the gender capacity and gender sensitivity of staff members at agencies in all branches of government; and (5) introducing gender budgeting setting in the budget process. The Committee welcomes the Government's indication that, with a view to achieving de facto gender equality, a working group on the improvement of laws and regulations to eradicate gender stereotypes, protect women's rights and prevent domestic violence has made proposals on introducing the concepts of direct and indirect discrimination, temporary measures, and compulsory gender analysis of laws. As regards the Law on State Guarantees of 2005, the Committee notes that in 2018, the Committee for Women's and Family Affairs (CWFA) monitored its implementation, by collecting and analysing data from central ministries and agencies, and selected local executive authorities. The Government further states that a report, which includes an analysis of the implementation of the law's articles, and conclusions and recommendations to improve its monitoring and implementation, was prepared in this regard.

The Committee notes from ITUC's observations that it regrets the lack of concrete information provided by the Government to the supervisory bodies, which would enable a more comprehensive assessment of the situation in the country. It further notes that ITUC emphasizes the need not only to draft laws but also to implement specific policies to eliminate all forms of discrimination and take proactive measures to identify and address the underlying causes of discrimination and gender inequalities deeply entrenched in traditional and societal values. The Committee notes ITUC's statement that the very name of the body responsible for the implementation of the national policy to protect and ensure the rights and interests of women and their families, the "Committee for Women's and Family Affairs", raises an issue because it appears to enshrine the idea that women are the only ones who have to assume responsibilities in relation to their families. In this regard, the Committee notes the Government's indication that, with the aim of eradicating stereotypes about the roles and duties of women and men in the family and society, and to boost awareness of and ensure equal rights and opportunities for men and women, a range of measures were implemented for different sections of society and the possibilities of the mass media are widely used. More than 200 programmes on understanding the importance of ensuring equal rights and opportunities for men and women were prepared and broadcasted by the members of the CWFA. In its supplementary information, the Government also indicates that it is taking every measure to root out gender discrimination against women based on stereotyped ideas of their capabilities and role in society, which contradict the Convention and hinder women's recruitment and employment.

The Committee notes the Government's statement that expanding economic opportunities for women and their competitiveness in the labour market, and the development of their entrepreneurial activities play a key role in ensuring gender equality. In this regard, it notes the detailed information regarding measures adopted to support the development of women entrepreneurship, through the allocation of grants, access to microcredit and an inter-agency working group to support women's entrepreneurship operating under the State Committee for State Property Investment and Management. The Government also indicates that further to the adoption of concluding observations in 2018 by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW/C/TJK/CO/6, 14 November 2018, paragraph 37), it has formulated, through broad discussions with the civil society, and adopted in May 2019, a National Plan of Action to Implement the Recommendations of the CEDAW 2019–22. In this regard, the Committee notes that the CEDAW, while welcoming the measures taken to support women entrepreneurs and to regulate domestic work and work from home, expressed concern inter alia about the following: (1) the concentration of women in the informal sector and in low-paying jobs in the healthcare, education and agriculture sectors; (2) the low level of participation of women in the labour market (32.6 per cent) and the low employment rate among women (40.5 per cent), compared with men (59.5 per cent); (3) the absence of social security coverage, the shortage of preschool facilities and family responsibilities non compatible with paid work, which make women particularly prone to unemployment; (4) the adoption in 2017 of the list of occupations for which the employment of women is prohibited; and (5) the lack of access to employment for women with a reduced capacity for competitiveness, such as women with disabilities, mothers with several children, women heads of single-parent families, pregnant women and women who have been left behind by male migrants.

With respect to the employment of women in the civil service, the Committee welcomes the various steps taken by the Government. It notes the indication that, as at 1 July 2019, there were 18,835 active civil servants in total (19,119 as at 1 January 2019), including 4,432 women, which represented 23.5 per cent of civil servants (4,441 or 23.2 per cent as at 1 January 2019). In leadership positions, there were 5,676 persons representing 30.1 per cent of all civil servants and 1,044 of them were women (18.4 per

cent in such positions). The Committee further notes, from the Government's additional information, that as at 1 April 2020, women represented 23.7 per cent of civil servants, and 19.1 per cent of leadership positions. With a view to promoting gender equality in the civil service, the Government adds that the Civil Service Agency (CSA) together with all State bodies is taking appropriate steps to recruit women to the civil service at all levels of public administration. The Committee notes the Government's indication that, in the first half of 2019, the CSA together with the Institute for State Administration held 24 professional training courses for civil servants, including four retraining and 20 professional development courses, which were attended by 977 persons – 236, or 24.1 per cent, of whom were women. In line with the requirements of State statistical report form No. 1-GS, "Report on the quantitative and qualitative composition of civil service", the CSA also conducts quarterly monitoring and draws up statistical reports on the number of civil servants, including women, the results of which are transmitted to the appropriate State bodies and discussed at board meetings for the necessary steps to be taken. The Government also mentions positive measures adopted to promote the employment of women in the civil service, through the implementation, since 2017, of the State Programme on the Development, Selection and Placement of Gifted Women and Girls as Leading Cadres of Tajikistan 2017–2022; the establishment of incentives and quotas for women; and, on first appointment to the civil service, the granting of three additional steps on the grading scale, pursuant to Presidential Decree No. 869 adopted in 2017. According to the Government, as a result of implementing those measures, 36 women were recruited to various civil service positions in the first half of 2019.

***Welcoming the positive developments regarding the promotion of gender equality in employment and occupation both in the private and the public sectors, the Committee asks the Government to pursue its efforts to foster equality opportunity and treatment between men and women in employment and occupation and, in particular, to take appropriate steps, including through amending legislation, to address indirect discrimination and occupational gender segregation. The Committee asks the Government to provide information on the content, conclusions and recommendations of the report prepared to analyse the implementation of the Law No. 89 on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights of 2005, as well as on any follow-up measures taken in this regard. The Committee also asks the Government to continue to provide detailed information on the situation of men and women in employment and occupation, both in the private and public sectors, as well as on the results of any positive measures taken to improve women's access to employment, and their results. Noting that the Government's report does not contain any information on any concrete measures taken, and their results, to address direct and indirect discrimination based on grounds other than sex, the Committee asks the Government to provide such information in its next report.***

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

## Turkey

### Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)

The Committee notes the observations from the Confederation of Public Employees Trade Unions (KESK), received on 31 August 2020 and the Government's reply thereto received on 4 November 2020. Furthermore, the Committee notes the observations of the Confederation of Turkish Trade Unions (TÜRK-IS) transmitted by the Government on 3 November 2020.

The Committee also notes the observations of the Turkish Confederation of Employer Associations (TİSK) received on 31 August 2017, which were supported by the International Organisation of Employers (IOE) and the Government's reply thereto. The Committee also notes the observations of Education International (EI) and the Education and Science Workers' Union of Turkey (EGITIM SEN) received on 1 September 2017 and the Government's reply thereto. It further notes the observations of the Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) and the TÜRK-IS which were attached to the Government's report.

*Articles 1 and 4 of the Convention. Discrimination based on political opinion. Activities prejudicial to the security of the State.* In its previous comments, the Committee noted with deep regret that the Government had not provided any information on the practical application of the Anti-Terrorism Act and the Penal Code in cases involving journalists, writers and publishers expressing their political opinions. ***Noting that it did not provide the required information, the Committee firmly urges the Government to provide information on the practical application of the Anti-Terrorism Act and the Penal Code in cases involving journalists, writers and publishers, as well as on all the cases brought before the courts against them, indicating the charges brought and the outcome.***

*Massive dismissals in the public sector: Civil servants, teachers and members of the judiciary.* The Committee notes the observations of EGITIM SEN alleging the arbitrary dismissals of hundreds of its members (1,546 as of August 2017) from their teaching positions without any proof and without any court

hearing; more than 300 were dismissed from their university positions because they had been critical of the Government and signed a petition in this regard. It also notes that, according to Türkiye Kamu-Sen, in 2015, 75,000 head teachers lost their jobs overnight (50,000 of these were members of EGITIM SEN). The Committee notes the Government's indication in its report that the dismissals of civil servants, members of the judiciary and teachers took place after the coup attempt in July 2016, "on the grounds of membership, affiliation or connection with a terrorist organization". The Government adds that under the Penal Code and the Public Servants Law (Law No. 657), public officials who have been under investigation on charges of membership of a terrorist organization or an offense against constitutional order can be suspended from their posts, because "their conducting public duties constitutes a major threat to the security of public services, causing the disruption of it". The Government emphasizes that the criteria of loyalty to the State has to be met by civil servants. It also indicates that it has adopted several state of emergency decrees, including Decree-Law No. 667 on measures taken within the scope of state of emergency stating that "members of the judiciary, including the Constitutional Court, and all State officials shall be dismissed from the profession or the public service, if they are considered to have an affiliation, membership, cohesion or connection to terrorist organizations or to groups, formations or structures determined by the National Security Council to be engaged in activities against the national security of the State". Members of the judiciary who have been expelled from the profession can file a complaint before the Council of State. The Government adds that, pursuant to Emergency Decree-Law No. 6851, a commission to review the actions taken under the scope of state of emergency (hereafter the Inquiry Commission) has been established for a term of two years to assess and decide upon applications lodged by public servants, through the governorates or the last institution in which they were employed, against expulsion from their profession, cancellation of fellowship, dissolution of organizations, or the reduction in ranks in the case of retired personnel. According to the Government, the examination of complaints takes place on the basis of the documents that are in the file, and the decision of the Inquiry Commission is subject to review by the courts. In this regard, the Committee notes the KESK's allegations that, although 4 years passed, as of 3 July 2020 there were still 18,100 cases pending in front of the Inquiry Commission. It further alleges that: (1) there is no transparent mechanism through which public officers, who have no idea of the reason for their dismissal, can challenge any so called evidence against them; (2) there is no clear criteria that the Inquiry Commission adopted in its procedure; and (3) the selection of cases to be examined is arbitrary since there is no chronological or other order. The KESK also indicates that, according to a press statement issued by the Inquiry Commission, 96,000 of the applications were rejected and 12,200 public officers were reinstated, which shows that 89 per cent of the applications were rejected. It further underlines that even if public officers whose applications are rejected have a chance to apply to administrative courts, it will take several years.

The Committee notes from the Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the impact of the state of emergency on human rights in Turkey (January–December 2017), that "following the coup attempt [July 2016] at least 152,000 civil servants were dismissed, and some were also arrested, for alleged connections with the coup, including 107,944 individuals named in lists attached to emergency decrees" and over "4,200 judges and prosecutors were dismissed". The OHCHR's report also indicates that "an additional 22,474 people lost their jobs due to closure of private institutions, such as foundations, trade unions and media outlets" (paragraph 8). The Committee notes that the OHCHR observed that "dismissals were accompanied by additional sanctions applied to physical persons dismissed by decrees or through procedures established by decrees", including a lifelong ban from working in the public sector and in private security companies and the systematic confiscation of assets and the cancellation of passports (paragraph 68). According to the OHCHR's report, "[d]ismissed people lost their income and social benefits, including access to medical insurance and retirement benefits". Finally, the Committee notes the concern expressed by the OHCHR that "the stigma of having been assessed as having links with a terrorist organization could compromise people's opportunities to find employment" (paragraph 70).

The Committee also refers the Government to its 2018 observation, under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on the massive dismissals that took place in the public sector under the state of emergency decrees, and to the discussion that took place in the Conference Committee on the Application of Standards (CAS) in June 2019 on the application by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and to its current observation under Convention No. 98.

The Committee recalls that, under *Article 1(1)(a)* of the Convention, discrimination on the basis of political opinion is prohibited in employment and occupation. It also recalls that in paragraph 805 of its General Survey of 2012 on the fundamental Conventions, the Committee indicated that protection against discrimination on the basis of political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions and in respect of political affiliation. The Convention allows for exceptions, including measures warranted by the security of the State under *Article 4*, which are not deemed to be discrimination and must be strictly interpreted to avoid any undue limitations on the protection against discrimination. The Committee also recalls that it

indicated in paragraphs 833–835 of its General Survey of 2012 that such measures "must affect an individual on account of activities he or she is justifiably suspected or proven to have undertaken" and they "become discriminatory when taken simply by reason of membership of a particular group or community". As "the measures refer to activities qualifiable as prejudicial to the security of the State[,] [t]he mere expression of opinions or religious, philosophical or political beliefs is not a sufficient basis for the application of the exception. Persons engaging in activities expressing or demonstrating opposition to established political principles by non-violent means are not excluded from the protection of the Convention by virtue of Article 4. […] [A]ll measures of state security should be sufficiently well defined and precise to ensure that they do not become instruments of discrimination on the basis of any ground prescribed in the Convention. Provisions coached in broad terms, such as 'lack of loyalty', 'the public interest' or 'anti-democratic behaviour' or 'harm to society' must be closely examined in the light of the bearing which the activities concerned may have on the actual performance of the job, tasks or occupation of the person concerned. Otherwise, such measures are likely to entail distinctions and exclusions based on political opinion […] contrary to the Convention." In addition, the Committee recalls that "the legitimate application of this exception must respect the right of the person affected by the measures 'to appeal to a competent body established in accordance with national practice'". The Committee also recalls that "it is important that the appeals body be separate from the administrative or governmental authority and offer a guarantee of objectivity and independence" and "be competent to hear the reasons for the measures taken against the appellant and to afford him or her the opportunity to present his or her case in full".

***The Committee urges the Government to take appropriate steps to ensure that the requirements of the Convention are fully adhered to, taking into account the various criteria explained above. The Committee asks the Government to continue to provide information on the number of dismissals in the public sector, including teachers, that have taken place for reasons linked to the security of the State. The Committee further asks the Government to continue to provide information on the total number of appeals reviewed by the Inquiry Commission or by the courts, and their outcome, and to indicate whether in the course of the proceedings dismissed employees have the right to present their cases in person or through a representative. The Committee asks the Government to provide its comments regarding the KESK's allegations on the length of judicial reviews. The Committee further asks the Government to provide information on the number of complaints brought by dismissed employees alleging discrimination on the ground of political opinion.***

*Recruitment in the public sector.* The Committee notes the Government's indications regarding the recruitment of personnel in the public sector, in reply to its request regarding the previous allegations made by the KESK regarding discrimination against civil servants (the recording in personnel files of inappropriate data, discriminatory use of promotion and appointments, and of the rewards system) and to the lack of adequate sanctions in the event of discrimination. The Committee notes that the Government indicates that, for a first appointment or a reappointment in the public sector, a "security investigation" and an "archive screening" have to be conducted in strict confidentiality at every stage. According to the Government, it is therefore not possible to give information to individuals or institutions other than the institution requesting the investigation. The Government adds that recruitment in public institutions and organizations is made through a merit-based central examination and placement procedure. The Committee notes from the observations made by Türkiye Kamu-Sen that appointment and promotion practices by way of oral examination or interviews work in favour of unions close to the Government and subject members of other unions to discrimination. The union adds that "while it has been recorded in court judgments […] that the interviews were not a fair means of evaluation", "the Government still does not implement these court decisions and continues to discriminate". In addition, the Committee notes that the KESK, in its 2020 observations, reiterates its concerns about the impartiality, neutrality and independency of the majority of those who serve in committees in charge of making decisions about new public officers' suitability to the public sector and alleges that oral exams are used to select those who are loyal to the Government rather than eligible for public services. The organization alleges that there is a broad and vague interpretation of the Penal Code and the Anti-Terrorism Act as regards the recruitment of new public officers and working life of public officers. The KESK also alleges that Presidential Decree No. 225 published on 25 October 2018 requires that "candidates shall be subjected to a 'security investigation' and 'archive screening' in a way that covers also family members". According to the organization, dozens of people were not recruited on the ground that there had been a judicial investigation against them in the past, even if they had been acquitted since. The KESK further states that: (1) the Decree was taken to the Constitutional Court that ruled that it was contrary to articles 13 and 20 of the Constitution and was therefore abolished; and (2) a draft law regulating the same issues would be discussed at the Parliament in October 2020. The Committee notes the Government's statement in its reply that, further to the annulment of the existing regulation on "security investigation" and "archive screening" by the Constitutional Court, and in line with the Constitutional Court decision, works are under way to submit a new piece of legislation to the Parliament as of October 2020, and the objections put forward by the KESK lack any legal basis. The Committee notes that the Government recalls that, in accordance with article 3(3) titled "Basic principles" of the Law No. 657 on Civil Servants, "the State is to

base the entry into public service duties, the progress and promotion within the classes and the termination of duty on the merit system and to ensure that the civil servants have security in the implementation of this system with equal opportunities" and that entering the public office and promoting to senior management is based on merit. ***The Committee takes due note of the abolishment of Presidential Decree No. 225 published on 25 October 2018 and firmly hopes that the new piece of legislation announced by KESK and the Government will ensure that recruitment in the public sector is taking place without discrimination based on the grounds set out in the Convention, in particular political opinion. The Committee asks the Government to provide information on any development in this regard in law and in practice, including any procedure of "security investigation" and "archive screening" put in place by the future regulation. The Committee also asks the Government to ensure that persons alleging discrimination in recruitment and selection in the public sector have effective access to adequate procedures to review their case and to appropriate remedies. The Government is asked to provide information on any existing procedure allowing for an appeal against a negative decision in the recruitment process, the number and outcome of such appeals, and the effective implementation of court decisions relating to discrimination in recruitment and selection in the public sector.***

*Articles 1 and 2. Protection of workers against discrimination in recruitment. Legislation.* For a number of years, the Committee has been referring to the fact that section 5(1) of the Labour Code, which prohibits any discrimination based on language, race, sex, political opinion, philosophical belief, religion and sect, or similar reasons in the employment relationship, does not prohibit discrimination at the recruitment stage. The Committee notes with ***satisfaction*** the adoption, in April 2016, of the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701) which, in article 6, prohibits discrimination on the basis of gender, race, colour, language, religion, faith, sect, philosophical or political opinion, ethnic origin, wealth, birth, civil status, medical condition, disability or age, during the application, recruitment and selection processes, in employment and for termination of employment, and with respect to job advertisements, working conditions, vocational guidance, access to vocational training, retraining, on-the-job training, "social interests and similar subjects". According to article 6(3) of the Law, it is prohibited for employers or their representatives to reject a job application due to pregnancy, motherhood or childcare. The Committee notes that labour contracts or contracts for services which are excluded from the scope of labour legislation, and self-employment are covered by the provisions of article 6 of Law No. 6701. The Committee also welcomes the inclusion of employment in public institutions and organizations within the scope of this article. ***The Committee asks the Government to provide information on the application in practice of article 6 of Law No. 6701 and, in particular, to indicate if any complaints by workers or any labour inspection reports were made under article 6, and their outcome.***

*Article 2. Non-discrimination. Equality between men and women. Vocational education and training and public and private employment.* The Committee recalls that in its previous comments, it underlined the need to promote the access of women to adequate education and vocational training and to increase their participation in the labour force and in the public sector. With respect to the employment of women in the public service, the Committee notes the Government's indication that their participation has substantially increased due to temporary arrangements regarding working time and unpaid leave made available to mothers and fathers. As regards the private sector, it further notes that, according to the labour force statistics of February 2019, the labour force participation rate for women was 34 per cent (against 33.3 per cent in February 2018). The Committee welcomes the detailed information provided by the Government in its report, on the numerous programmes, projects, measures and activities developed and implemented with a view to promoting gender equality, including awareness-raising initiatives to fight against gender stereotypes and violence against women, strategies to reconcile work and family responsibilities such as the development of kindergartens and the provision of support for child care, vocational training programmes for women in non-traditional fields, and on-the job and entrepreneurship training programmes. The Committee notes that the Government also mentions the adoption of a Women's Employment Action Plan (2016–18) within the framework of the programme entitled "More and better jobs for women: Women's empowerment through decent work in Turkey" implemented jointly by the ILO and the Turkish Employment Agency (ISKUR) and financed by the Swedish International Development Agency (SIDA). The Government adds that the Action Plan aims to increase women's vocational skills and their means of access to the labour market and that 81 Provincial Gender Representatives, who received gender training, were appointed to monitor and report on its implementation together with the staff of ISKUR. The Committee also notes from the observations made by the TİSK that, according to the labour statistics, "one of the issues that needs to be addressed in order to facilitate the access of women to the labour market is education". The TİSK adds that, given the large number of women employed in the informal economy – in particular in agriculture – "priority must be given to the policies which will decrease undocumented work or informal employment of working women". The TİSK further points out that one of the main obstacles for women entering employment and on progressing in their career is the difficulties they face in reconciling work and domestic duties and that, despite the efforts made, there are not enough childcare institutions**.** The Committee notes the TÜRK-IS's allegations that, despite all the legal measures and policies put in place against discrimination, examples

of differential treatments are still reported in practice. According to the TÜRK-IS, while the rights of pregnant women are regulated by law, women face the threat of dismissal from their employers when they fall pregnant or when they request to use lawful maternity leave, in particular in the private sector. The organization also raises concern regarding the new post-natal leave that would directly turn the way women work into long-term low paid jobs or part time working. In addition, the Committee notes the allegations by the KESK that equality between men and women is still a problem in the public sector since current policies and practices lead to discrimination and the Government's policies affect women very deeply, with an objective to keep them away from public, social, economic and professional life. It further alleges that the participation rate of women in the public sector is 38 per cent while it is 62 per cent for men, and women are channelized into some positions and sectors, such as health, social services and education that are considered suitable for women. Moreover, being a woman public officer means there are certain social and professional barriers and, as a result, only 8 per cent of higher and managerial posts are held by women. There are about 650,000 women teachers but only 25 women out of 1,299 senior managers in the Ministry of Education (1.9 per cent). The KESK adds that, according to official figures, the participation rate of women in the labour force was 29.7 per cent in May 2020 while it was 34.4 per cent one year before, corresponding to 1.3 million fewer women. According to the KESK, although it is a fact that there was a decrease in the employment rate due to the COVID-19 pandemic, this deeply affects women. The Committee notes the Government's statement in its reply that it is of great importance that women become individually and socially stronger, have more qualified education opportunities, enhancing their efficiency in decision-making mechanisms, increasing their employment level by facilitating their entry into the labour market, providing their social security, increasing the number of women entrepreneurs and creating more added value in the economy. The Government adds that empowering women in the labour market and increasing their participation in working life are among its main priorities and recalls the investments made in the private sector in crèches, day-care centres and pre-school education. The Committee welcomes the information provided by the Government regarding the quantitative targets established in the "Women section" of the 11th Development Plan (2019–2023). Through the provision of guidance services and subsidies to female entrepreneurs, the development of digital environments and cooperatives and the promotion of training in non-traditional fields, it is expected to increase: (1) the female labour force participation rate to 38.5 per cent; (2) the female employment rate to 34 per cent; (3) the rate of women in self-employment to 20 per cent; and (4) the rate of women employers to 10 per cent. The Committee also welcomes the adoption of the "Strategy Paper and Action Plan on Women's Empowerment" to cover the period 2018–2023, which is built on the following five elements: awareness of women of their own value; the right to have options and to choose among them; the right to access opportunities and resources; the right to have the power to control their own lives inside and outside the home; and their ability to influence the direction of social change in order to create a fairer social and economic order at national and international level. The Committee notes that it is envisaged in this framework to conduct an assessment of the legislation on the labour market in a way to ensure women's empowerment and making necessary improvements for effective implementation as well as studies for the employment of women in professions that are not limited to traditional employment areas and more generally various measures to tackle occupational segregation. The Government also emphasizes the improvement of the female labour force participation and the female employment rates between 2002 and 2019 (respectively from 27.9 to 34.4 per cent and from 25.3 to 28.7 per cent). The Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about "the persistence of deep-rooted discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society", which "overemphasize the traditional role of women as mothers and wives, thereby undermining women's social status, autonomy, educational opportunities and professional careers". The CEDAW also noted with concern that "patriarchal attitudes are on the rise within State authorities and society" and expressed concern "about the high dropout rate and under-representation among girls and women in vocational training and higher education, in particular in deprived rural areas and refugee communities" (CEDAW/C/TUR/CO/7, 25 July 2016, paragraphs 28 and 43). ***Noting the encouraging developments regarding the promotion of gender equality in employment but also the very slow increase in the labour force participation rates of women, the Committee asks the Government to step up its efforts and continue taking specific proactive measures, including within the framework of the "Strategy Paper and Action Plan on Women's Empowerment" (2018–2023), the 11th Development Plan (2019–2023) and the ILO–ISKUR–SIDA programme, to promote the access of women to adequate education and vocational training and to formal and paid employment, including to higher level positions. The Committee also asks the Government to provide information on the implementation of the quantitative targets in the "Women section" of the 11th Development Plan and the results of any assessment of the legislative framework concerning women's employment and the conclusions of any studies conducted in the field of gender occupational segregation. The Committee asks the Government to adopt proactive measures to actively combat persistent gender stereotypes and stereotypical assumptions regarding women's aspirations, preferences and capabilities and "suitability" for certain jobs or their interest or availability for full-time jobs and their role in society. The Committee also asks the Government to***

***continue to take steps to enable both men and women to reconcile work and family responsibilities, including through the development of childcare and family facilities and support and by the removal of administrative obstacles to which the Government refers in this regard. Finally, the Committee asks the Government to provide its comments in reply to the TÜRK-IS' allegations regarding dismissal or threats of dismissal of pregnant women because of their pregnancy or taking full maternity leave.***

*Dress code.* The Committee welcomes the Government's indication that further to the amendment in 2013 and 2016 of the Regulations on the dress code of personnel employed in public institutions, security organizations and armed forces, women working in these institutions and organizations are now allowed to work with a headscarf. The Committee hopes that the Government will continue to ensure that all persons working in public institutions, security organizations and armed forces continue to enjoy protection against religious discrimination on the basis of a dress code.

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 100** *(Albania, Angola, Barbados, Belize, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Denmark: Greenland, Djibouti, Dominica, Fiji, France: French Polynesia, Gabon, Gambia, Georgia, Germany, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Libya, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Mexico, Montenegro, Morocco, Mozambique, Namibia, Netherlands, New Zealand, New Zealand: Tokelau, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Papua New Guinea, Republic of Korea, Republic of Moldova, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, South Sudan, Suriname, Timor-Leste, Uganda);* **Convention No. 111** *(Afghanistan, Albania, Argentina, Barbados, Belize, Burundi, Chad, China, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Dominica, Fiji, France: French Polynesia, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mexico, Montenegro, Morocco, Mozambique, Namibia, Netherlands, New Zealand, New Zealand: Tokelau, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Papua New Guinea, Republic of Korea, Republic of Moldova, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, South Sudan, Suriname, Tajikistan, Thailand, Timor-Leste, Turkey, Uganda);* **Convention No. 156** *(Belize, Greece, Guatemala, Guinea, Iceland, Japan, Kazakhstan, Republic of Korea, San Marino).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 100** *(Mali, Malta)*; **Convention No. 111** *(Mali, Malta)*.

# Tripartite consultation

## Antigua and Barbuda

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2002)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 5(1) of the Convention. Effective tripartite consultations.* The Government indicates in its report that the National Labour Board is currently engaged in the revision of the Labour Code. The Committee notes that the Government envisages establishing a subcommittee composed of members of the National Labour Board, along with representatives of workers and employers, to review international labour standards, engage the public in consultations when necessary and to make recommendations to the Minister on actions to be taken. The Committee notes, however, that once again the Government's report does not contain information with regard to tripartite consultations on the matters related to international labour standards covered by *Article 5(1)* of the Convention. ***Recalling its comments since 2008 concerning the activities of the National Labour Board, and noting that section B7 of the Labour Code, which establishes the Board's procedures, does not include the matters set out in Article 5(1) of the Convention, the Committee once again requests the Government to provide detailed information on the activities of the National Labour Board on matters related to international labour standards covered by the Convention. It further requests the Government to identify the body or bodies mandated to carry out the tripartite consultations required to give effect to the Convention. The Committee reiterates its request that the Government provide precise and detailed information on the content and outcome of the tripartite consultations held on all matters concerning international labour standards covered by Article 5(1)(a)–(e) of the Convention, especially those relating to the questionnaires on Conference agenda items (Article 5(1)(a)); reports to be presented on the application of ratified Conventions (Article 5(1)(d)); and proposals for the denunciation of ratified Conventions (Article 5(1)(e)).***

*Article 5(1)(b). Submission to Parliament.* The Government reiterates information provided in April 2014, indicating that the 20 instruments adopted by the Conference from its 83rd to its 101st Sessions (1996–2012) were resubmitted to Parliament on 11 March 2014. It adds that a request would be made to the Minister by 15 November 2017 via the Labour Commissioner and Permanent Secretary concerning submission of the instruments to Parliament. ***The Committee refers to its longstanding observations on the obligation to submit and once again requests the Government to indicate whether effective consultations leading to conclusions or modifications were held with respect to the proposals made to the Parliament of Antigua and Barbuda in connection with the submission of the above-mentioned instruments, including information regarding the date(s) on which the instruments were submitted to Parliament. In addition, the Committee requests the Government to provide information on the content, agenda, discussions and resolutions and on the outcome of the tripartite consultations held in relation to the submission of instruments adopted by the Conference as of 2014: the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, as well as the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session.***

*Article 5(1)(c). Examination of unratified Conventions and Recommendations.* The Government reports that the unratified conventions noted in its report were submitted to the National Labour Board on 11 November 2017 for re-examination with the social partners. ***The Committee requests the Government to provide updated information on the outcome of the re-examination of unratified Conventions, in particular: (i) the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which is deemed a governance Convention; (ii) the Holidays with Pay Convention (Revised), 1970 (No. 132), (which revises the Weekly Rest (Industry) Convention, 1921 (No. 14); the Holidays with Pay (Agriculture) Convention, 1952 (No. 101), to which Antigua and Barbuda is a State party); and (iii) the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), (which revises the Seafarers' Identity Documents Convention, 1958 (No. 108), that has also been ratified by Antigua and Barbuda).***

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

## Bangladesh

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)

*Article 5(1) of the Convention. Effective tripartite consultations.* The Committee welcomes the information provided by the Government on tripartite consultations held within the Tripartite Consultative Council (TCC) during the reporting period on matters concerning international labour standards covered by *Article 5(1)* of the Convention. In this respect, the Committee notes that, in 2017, the TCC discussed the possibility of ratifying the Minimum Age Convention, 1973 (No. 138). The Government reports that preparatory work for the ratification of Convention No. 138 is being carried out, including tripartite consultations in the TCC concerning ratification. With regard to the possible ratification of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Employment Policy Convention, 1964 (No. 122), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Government reiterates that the ratification of these instruments is not feasible in the near future, indicating that in light of current economic and social circumstances in the country, it would take considerable time to create favourable

administrative and legal systems prior to ratification. With respect to the ratification and application of the ILO instruments relevant to the occupational safety and health (OSH) framework contemplated under the 2013 Tripartite Statement of Commitment adopted after the tragic events of Rana Plaza and the Tazreen Factory, the Government indicates that the ratification of these instruments is not envisaged. The Government once again indicates that, while it has not ratified the OSH instruments, it is nevertheless committed to ensuring enforcement of existing legislation related to OSH. The Government refers in this context to the implementation of a set of initiatives taken with a view to improving the OSH situation of workers in the country, including the adoption of a National OSH Policy in 2013 and the establishment of a permanent Industrial Safety Unit under the Department of Inspection for Factories and Establishments within the Ministry of Labour and Employment (MOLE). It also refers to the establishment in March 2017 of a 20-member TCC for the ready-made garment (RMG) sector. The Government does not, however, indicate whether or not tripartite consultations were held to examine the possible ratification of the OSH instruments referenced. Lastly, the Government refers to the adoption of measures taken during the reporting period to strengthen the Tripartite Consultative Council, such as the establishment in 2017 of a TCC support unit within the MOLE. In addition, the formation of the TCC was incorporated in the Bangladesh Labour Act, 2006 (BLA), in amendments introduced in 2018. ***The Committee requests the Government to provide specific and detailed information on the content, the outcome and the frequency of the tripartite consultations held on all matters concerning international labour standards covered by the Convention, including on: replies to the questionnaires on Conference agenda items (Article 5(1)(a)); the submission of instruments adopted by the Conference to Parliament (Article 5(1)(b)); the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given (Article 5(1)(c)), including ILO instruments relevant to the occupational safety and health (OSH) framework; and reports to be presented on the application of ratified Conventions (Article 5(1)(d)).***

In the context of the global COVID-19 pandemic, the Committee recalls the comprehensive guidance provided by international labour standards. It encourages Member States to engage in tripartite consultation and social dialogue more broadly as a solid foundation for developing and implementing effective responses to the profound socio-economic impacts of the pandemic. ***The Committee invites the Government to continue to provide updated information in its next report on the measures taken in this respect, in accordance with Article 4 of the Convention and Paragraphs 3 and 4 of Recommendation No. 152, including with regard to steps taken to reinforce the capacity of the tripartite constituents and strengthen mechanisms and procedures, as well as challenges and good practices identified.***

## Botswana

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

The Committee notes the observations from the Botswana Federation of Trade Unions (BFTU) received on 1 October 2020. The BFTU indicates that the Government submitted in 2019 a revised list of essential services to Parliament, without previously consulting the Labour Advisory Board (LAB) as provided by the law. The BFTU further indicates that the reports submitted to the ILO in 2019 and 2020 have not been consulted with the social partners. Finally, the BFTU alleges that the last tripartite meeting to discuss the measures to be taken to address the COVID-19 pandemic took place on 17 March 2020. Many measures have been taken since then without consultation. ***The Committee requests the Government to provide its comments in this regard.***

*Article 5(1) of the Convention. Effective tripartite consultations.* In its 2018 observation, the Committee requested the Government to provide detailed updated information on the content and outcome of effective tripartite consultations held within the Labour Advisory Board (LAB) and the High Level Consultative Committee (Sub-HLCC) on all matters related to international labour standards covered under *Article 5(1)* of the Convention, particularly with regard to the possible ratification of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). The Committee further requested information on the frequency of consultations, as well as on jurisprudence relevant to the application of the Convention. The Government reports that the LAB met in 2016 and 2017 to discuss the Trade Disputes Bill of 2015 and the appointment of mediators and arbitrators. The Government also refers to the Labour Sector Committee of the High Level Consultative Council (HLCC), a tripartite structure that discusses issues pertaining to labour and employment, indicating that the HLCC meets four times a year. The Government adds that Botswana's labour laws are currently being reviewed by a tripartite Labour Law Review Committee with a view to aligning them with the provisions of ratified ILO Conventions, closing legislative gaps and transposing various judicial decisions into law. ***Noting that the Government has not provided the information requested relating to the implementation of Article 5(1) of the Convention, the Committee once again requests that the Government provide updated detailed information on the specific content and outcome of effective***

***tripartite discussions held by the relevant bodies on all matters related to international labour standards as required under Article 5(1)(a) through (e) of the Convention, including with respect to the possible ratification of Conventions Nos 81 and 129. The Committee also invites the Government to continue to provide information on the activities of the tripartite bodies concerned, as well as on the results of the review of the tripartite Labour Law Review Committee insofar as they are relevant to the application of the provisions of the Convention.***

In the context of the global COVID-19 pandemic, the Committee recalls the comprehensive guidance provided by international labour standards. It encourages the Government to engage in tripartite consultation and social dialogue more broadly as a solid foundation for developing and implementing effective responses to the profound socio-economic impacts of the pandemic***. The Committee invites the Government to continue to provide updated information in its next report on the measures taken in this respect, in accordance with Article 4 of the Convention and Paragraphs 3 and 4 of Recommendation No. 152, including with regard to steps taken to reinforce the capacity of the tripartite constituents and strengthen mechanisms and procedures, as well as challenges and good practices identified.***

## Burundi

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

The Committee notes the supplementary information provided by the Government in the light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee examined the implementation of the Convention on the basis of the additional information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations formulated by the Trade Union Confederation of Burundi (COSYBU), received on 19 August 2019 and 14 August 2020.

*Articles 2 and 5 of the Convention. Effective tripartite consultations*. In its previous comments, the Committee requested the Government to provide a copy of the legislative, administrative or other provisions giving effect to the Convention, and particularly those governing the composition and operation of the National Social Dialogue Committee (CNDS) and the provincial social dialogue committees (CPDS), and to provide detailed information on the consultations held annually on the matters relating to international labour standards set out in *Article 5(1)* of the Convention. The Government refers to the National Social Dialogue Charter adopted by the tripartite constituents in 2011, which enumerates the tripartite consultation mechanisms and their operation. It indicates that the CNDS was established by Decree No. 100/132 of 21 May 2013 revising Decree No. 100/47 of 9 February 2012 on the establishment, composition and operation of the CNDS. The CNDS is composed of seven Government representatives, seven employers' representatives and seven workers' representatives. It is chaired by an independent person chosen by the social partners. The Committee notes that the CNDS meets once quarterly in ordinary session and whenever necessary in extraordinary session. It also notes that the consultations held by the CNDS can be on any theme relating to the world of work. In its additional information, the Government explains that effective consultations between the tripartite constituents on matters relating to ILO activities take place through the CNDS. It specifies that the CNDS, as a national tripartite dialogue body, has provincial branches throughout the country, the provincial social dialogue committees (CPDS) created by Ministerial Ordinance No. 570/1697 of 21 November 2017. The Committee notes that the members of the CPDS elect a tripartite bureau, consisting of a President, a Vice-President and a Secretary, that meets once monthly. Furthermore, the Government refers to the Sectoral Social Dialogue Committee (CDSB), the mechanism for consultations on sectoral issues, which is active in some sectors, such as health and education, whereas action is required to revitalize it in other sectors. In its observations, COSYBU underscores that, since the adoption of the National Social Dialogue Charter in 2011 and the establishment of these social dialogue structures, no international instrument has been ratified or adopted. COSYBU maintains that it continues to call for consultations on the ratification of unratified ILO Conventions, including the two governance Conventions not yet ratified by Burundi, namely, the Employment Policy Convention, 1964 (No.122) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). In its previous comments, the Committee noted that these two Conventions were currently under examination by the Ministry of Public Service, Labour and Social Security. Furthermore, COSYBU indicates that it supports the motion before Parliament to adopt the following Recommendations: the Work in Fishing Recommendation, 2007 (No. 199); the HIV and AIDS Recommendation, 2010 (No. 200); the Domestic Workers Recommendation, 2011 (No. 201); the Social Protection Floors Recommendation, 2012 (No. 202); the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203); the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204); and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). COSYBU asks to be kept informed of the outcome of the motion before Parliament. The Committee observes that the Government has not provided information on the content and outcome of the tripartite consultations that took place in the

above-mentioned tripartite consultation mechanisms. ***The Committee requests the Government to provide a copy of the legislative provisions governing the composition and operation of the CNDS, the CDSB and the CPDS. It further requests the Government to provide detailed and updated information on the number, distribution and state of operation of all of these mechanisms in the country. It requests the Government to provide detailed information on the frequency, content and outcome of the tripartite consultations held on each of the matters relating to international labour standards set out in Article 5(1) of the Convention, including the consultations held to re-examine the prospects of ratification of unratified ILO Conventions, in particular those identified by the social partners, namely: the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Workers with Family Responsibilities Convention, 1981 (No. 156); the Maternity Protection Convention, 2000 (No. 183); the Domestic Workers Convention, 2011 (No. 189); and the Violence and Harassment Convention, 2019 (No. 190).***

*Article 4. Administrative support.* The Committee notes the additional information provided by the Government further to its previous comments, in which it indicates that in fact there is no administrative support for consultation procedures, but that training is conducted on an occasional basis by trade union confederations and federations. The Committee recalls that under *Article 4* of the Convention, the competent authority – the State – shall assume "responsibility for the administrative support of the procedures" relating to consultations and that this responsibility, as it noted in its General Survey of 2000, clearly encompasses responsibility for the financing that this entails. The Committee observes that *Article 4(2)* of the Convention concerns the financing of the measures that should be taken to provide appropriate training in order to enable those taking part in consultation procedures to carry out their functions effectively. ***The Committee hopes that the Government will take the necessary measures without further delay in order to fulfil its normal responsibilities. It requests the Government to keep the Office informed of any new developments in this regard.***

*COVID-19.* The Committee notes that, in view of the COVID-19 pandemic, tripartite consultations on international labour standards may have been postponed. Against this background, the Committee recalls the guidance provided by international labour standards and encourages the Government to use tripartite consultations and social dialogue as a sound basis for the development and implementation of effective responses to the profound socio-economic repercussions of the pandemic. ***The Committee invites the Government to provide, in its next report, updated information on any arrangements made in this regard, including with respect to measures taken to build the capacities of the tripartite constituents, in accordance with Article 4 of the Convention and Paragraphs 3 and 4 of Recommendation No. 152, and to improve national tripartite procedures and mechanisms. It further requests the Government to provide information on the challenges encountered and good practices identified with regard to the application of the Convention, during and after the pandemic.***

## Chad

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)

*Articles 2 and 5 of the Convention. Effective tripartite consultations. Technical assistance.* The Committee has been inviting the Government since 2014 to provide information on the progress made following the assistance provided by the ILO in 2013 on matters related to tripartite consultations and social dialogue. However, the Committee notes once again that the Government has not provided the requested information on the activities and progress achieved in ensuring the holding of the effective tripartite consultations required by the Convention. The Committee also recalls that, under the terms of *Article 5(2)*, of the Convention, tripartite consultations have to be held at appropriate intervals fixed by agreement, but at least once a year (see the General Survey on tripartite consultation, 2000, paragraphs 119 and 120). ***The Committee therefore once again requests the Government to provide information on the measures taken and the progress achieved with regard to matters relating to tripartite consultations and social dialogue. In particular, the Committee requests the Government to provide precise and detailed information on the frequency, content and outcome of the tripartite consultations held by the Higher Committee for Labour and Social Security on all the matters relating to international labour standards covered by Article 5(1) of the Convention, and particularly in relation to questionnaires on the items on the agenda of the Conference (Article 5(1)(a)), the submission of the instruments adopted by the Conference to the Parliament (Article 5(1)(b)), the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given (Article 5(1)(c)) and the reports to be made on the application of ratified Conventions (Article 5(1)(d)).***

*Article 4(2). Training.* The Committee notes the information provided by the Government according to which the economic crisis experienced by the country has slowed down most activities, including those relating to the training of participants in consultation procedures. ***The Committee once again requests***

***the Government to describe the arrangements made for the financing of any necessary training of participants in the consultation procedures.***

In the context of the global COVID-19 pandemic, the Committee recalls the guidance provided by international labour standards. It encourages the Government to engage more broadly in tripartite consultation and social dialogue, which offer a solid basis for the preparation and implementation of effective responses to the deep-rooted socio-economic repercussions of the pandemic. ***The Committee invites the Government to continue to provide updated information in its next report on the measures taken in this respect, in accordance with Article 4 of the Convention and Paragraphs 3 and 4 of Recommendation No. 152, including with regard to steps taken to reinforce the capacity of the tripartite constituents and strengthen mechanisms and procedures, as well as challenges and good practices identified.***

## Chile

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee has examined the application of the Convention on the basis of the supplementary information received from the Government this year, as well as the information at its disposal in 2019.

The Committee also notes the observations of the Single Central Organization of Workers of Chile (CUT-Chile), received on 13 September 2018 and 6 October 2020. ***The Committee requests the Government to send its replies in this regard.***

*Tripartism and social dialogue. COVID-19 pandemic.* The Committee notes the information provided by the Government in its supplementary report on the measures adopted to promote tripartism and social dialogue in the country. In this regard, the Government refers, among other measures, to the implementation of trade union training projects at the regional level within the framework of the trade union training fund, as well as the establishment of tripartite social dialogue forums at the national and regional levels in which consultations have been held on a broad range of labour issues, such as the regulation of the right to a lunch, the promotion of women's work in certain sectors, vocational reskilling and the recognition of labour rights to household refuse collectors. However, the Committee notes the allegation by the CUT-Chile that workers' organizations were not consulted regarding the new labour rules adopted in the context of the health emergency caused by the COVID-19 pandemic, such as: Act No. 21 227 of 6 April 2020 facilitating access to unemployment insurance benefits in exceptional circumstances; Act No. 21 220 of 26 March amending the Labour Code in respect of remote working; and the electronic severance procedure introduced by the Department of Labour. In the context of the global COVID-19 pandemic, the Committee recalls the broad guidance provided by international labour standards. The Committee encourages Member States to engage in broader tripartite consultations and social dialogue as a solid basis for drawing up and implementing effective responses to the deep-rooted socio-economic effects of the pandemic. ***The Committee invites the Government to provide updated information in its next report on the measures adopted in this respect, in accordance with Article 4 of the Convention and Paragraphs 3 and 4 of Recommendation No. 152, and particularly the measures adopted to build the capacities of constituents and strengthen tripartite mechanisms and procedures, as well as the challenges and good practices identified.***

*Articles 2 and 5 of the Convention. Effective tripartite consultations.* The Committee notes the detailed information provided by the Government on the activities of the Higher Labour Council between 2017 and 1 January 2020. In particular, the Government refers to the holding of tripartite consultations on the possibility of ratifying the Protocol of 2014 to the Forced Labour Convention, 1930. The Government indicates that the Protocol was subsequently submitted to the Chamber of Deputies, where it is awaiting approval for ratification. Communications from the most representative organizations of employers and workers in the maritime sector were also forwarded on the amendments adopted in 2018 to the Maritime Labour Convention, 2006 (MLC, 2006). The Government also reports the establishment of various tripartite sectoral standing commissions, such as the Thematic Commission on Disability and the Thematic Commission on the implementation of the MLC. With regard to the latter, the Government indicates that it prepared an analysis of the national legislation with a view to identifying the necessary legislative adjustments to ensure compliance with the MLC, 2006. The Government once again refers to the organization in 2014, 2015 and 2019 of tripartite consultations within the framework of the Advisory Council on Occupational Safety and Health, as well as various regional tripartite workshops on the development of the National Occupational Safety and Health Policy (PNSST) with a view to giving effect to the provisions of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). In this regard, the Government indicates, contrary to the indications made by the Production and Trade Confederation (CPC) in its observations of 1 September 2016, that employers' organizations were

also invited to participate in the tripartite workshops (held on 8 August and 22 July 2014 and 9 March 2015). Moreover, in 2017 and 2018, tripartite consultations and workshops were held, some with ILO collaboration, to draw up the National Occupational Safety and Health Programme, which was finally adopted on 2 February 2018. The Government adds that in April 2019 a new version of the Programme was submitted to the members of the Advisory Council for their views. The Government further reports that, within the working group on dock work, tripartite consultations have been held on the possible ratification of the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), and that a formal request was made to the Office for technical assistance on 21 January 2020 for the preparation of an analysis of possible legal gaps in the national legislation in this respect.

However, the Government notes the allegation by the CUT-Chile in its observations that, in practice, effective tripartite consultations on labour issues have not been held in the Higher Labour Council, which only operates for information purposes. In this respect, the CUT-Chile alleges that the social partners were not consulted prior to the submission of various international labour standards, some of which have been ratified. In particular, it maintains that tripartite consultations were not held in relation to the following instruments: the Violence and Harassment Convention, 2019 (No. 190), the Work in Fishing Convention, 2007 (No. 188), the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, the Private Employment Agencies Convention, 1997 (No. 181), the Safety and Health in Mines Convention, 1995 (No. 176), the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), the Collective Bargaining Convention, 1981 (No. 154), the Rural Workers' Organisations Convention, 1975 (No. 141), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection Convention, 1947 (No. 81). The CUT-Chile adds that, while the Government has held consultations with the Office concerning the possible denunciation of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the social partners have not been consulted on this subject. The CUT-Chile also alleges that it did not receive copies of the reports on ratified Conventions, submitted under article 22 of the ILO Constitution sufficiently in advance to be able to comment on them. In this respect, the Committee recalls that, "[i]n order to be 'effective', consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted [...] The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions" (see the 2000 General Survey on tripartite consultation, paragraph 31). Finally, the Committee notes that the Government has not provided information on the tripartite consultations held on replies to questionnaires concerning items on the agenda of the International Labour Conference, the re-examination at appropriate intervals of unratified Conventions and of Recommendations, and proposals for the denunciation of ratified Conventions (*Article 5(1)(a), (b), (c)* and *(e)*). ***The Committee therefore requests the Government to provide detailed and updated information on the specific content, frequency and outcome of the tripartite consultations held on all the matters relating to international labour standards covered by Article 5(1) of the Convention. Moreover, in light of the observations of the CUT-Chile, the Committee requests the Government to provide information on the consultations held with the social partners on the manner in which the functioning of the procedures required by the Convention could be improved, including the possibility of establishing a schedule for the preparation of reports sufficiently in advance (Article 5(1)(d)).***

# China

## Hong Kong Special Administrative Region

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (notification: 1997)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Articles 2(1) and 3(1) of the Convention. Effective tripartite consultations. Election of representatives of the social partners*. The Committee has been requesting for some years that the Government and the social partners promote and strengthen tripartism and social dialogue in order to facilitate the operation of the procedures governing effective tripartite consultations, including ensuring the meaningful participation of the Hong Kong Confederation of Trade Unions (HKCTU) in the consultation process. In its previous comments, the Committee expressed its concern that there is a risk that the HKCTU may have been excluded from meaningful participation in the consultative process among the most representative organizations of workers in the Labour Advisory Board (LAB), as a result of the electoral system in place in the Special Administrative Region. In this context, the Committee recalls the previous observations of the HKCTU, which expressed concern in relation to the electoral system for representation on the LAB, the designated tripartite body for tripartite consultations for purposes of the Convention. In its observations,

the HKCTU indicated that the composition of the LAB includes six workers' representatives, five of whom are elected by registered trade unions, with a sixth representative appointed ad personam by the Government. It noted that, according to the current system, union votes are given equal weight regardless of size of membership, according to the principle of "one union, one vote". Moreover, the electoral system allows voters to vote for a slate of five candidates, as a block, in one ballot. As a result, if the slate of five candidates receives more than half of the votes, the slate would win all five seats. In its observations, the HKCTU maintained that this electoral system was unjust and had effectively prevented it from being elected to the LAB, despite its status as the second largest trade union confederation. The Committee notes the Government's indication that its position in respect of the application of the Convention remains unchanged. The Committee notes that, in its report, the Government once again reiterates its commitment to ensuring effective tripartite consultations through the LAB, as well as reiterating information previously provided concerning its electoral system. The Government reiterates that, in the Hong Kong Special Administrative Region (HKSAR), every workers' union is free either to affiliate to one or more trade union groups or to remain unaffiliated. The Government notes that more than half of the registered workers' unions are not affiliated to any major trade union group and that, since all workers' unions may exercise their free choice in the election, no trade union group can dictate the election results. It adds that all registered workers' unions are entitled to exercise their free choice in the election and that there is no question of any particular workers' union being excluded from the election. The Government reiterates its commitment to continuing to ensure that every registered trade union, including those affiliated to the HKCTU, enjoys the same right as other registered trade unions to nominate candidates and to vote in the election of workers' representatives of the LAB. Nevertheless, the Government reiterates that it would be improper and inappropriate if the system of electing workers' representatives to the LAB were to be changed for the advantage of a particular organization. In this context, the Committee notes that the latest election of workers' representatives in the LAB was held in November 2018. The Government indicates that 12 nominations were received, which included four incumbent workers' representatives and that, after the trade unions cast their votes by secret ballot, three incumbent workers' representatives and two other candidates were elected. The HKCTU was not elected to the LAB. The Committee recalls that the term "most representative organizations of employers and workers", as provided for in *Article 1* of the Convention, "does not mean only the largest organization of employers and the largest organization of workers". In its 2000 General Survey on tripartite consultation, paragraph 34, the Committee refers to Advisory Opinion No. 1 of the Permanent Court of International Justice, dated 31 July 1922, in which the Court established that the use of the plural of the term "organizations" in Article 389 of the Treaty of Versailles referred to both organizations of employers and those of workers. Based on this opinion, the General Survey clarified that the term "most representative organizations of employers and workers" does not mean only the largest such organization. If in a particular country there are two or more organizations of employers or workers which represent a significant body of opinion, even though one of them may be larger than the others, they may all be considered to be "most representative organizations" for the purpose of the Convention. In such cases, governments should endeavour to secure an agreement of all the organizations concerned in establishing the tripartite procedures (2000 General Survey on tripartite consultation, paragraph 34). ***The Committee therefore once again urges the Government to make every effort, together with the social partners, to ensure that tripartism and social dialogue are promoted and strengthened so as to facilitate the operation of procedures that ensure effective tripartite consultations that include the most representative organizations of employers and workers, as required under Articles 1 and 2 of the Convention, including by encouraging the Labour Advisory Board to amend its current electoral system. The Committee also once again requests the Government to report on progress made in ensuring the HKCTU's meaningful participation in the consultative process among the most representative organizations of workers.***

*Article 5(1). Effective tripartite consultations*. The Government indicates that, during the reporting period, the LAB's Committee on the Implementation of International Labour Standards (CIILS) was consulted on all reports to be submitted under article 22 of the ILO Constitution. The procedures for preparing these reports and copies of the reports were communicated to all members of the LAB. In 2018, members of the CIILS met with officials from the Transport and Housing Bureau and the Marine Department of the HKSAR Government and were informed of progress with regard to the application of the Maritime Labour Convention, 2006 (MLC, 2006), in the HKSAR. The Committee notes the report of the LAB for 2017–18, communicated together with the Government's report. ***The Committee requests the Government to continue to provide detailed and up-to-date information on the content and outcome of the consultations held on all of the matters relative to international labour standards as required under Article 5(1)(a)–(e) of the Convention.***

In the context of the global COVID-19 pandemic, the Committee recalls the comprehensive guidance provided by international labour standards. It encourages the Government to engage in tripartite consultation and social dialogue more broadly as a solid foundation for developing and implementing effective responses to the profound socio-economic impacts of the pandemic. ***The Committee invites the Government to provide updated information in its next report on measures taken in this respect, in***

***accordance with the guidance provided in Article 4 of the Convention as well as Paragraphs 3 and 4 of Recommendation No. 152, including with regard to steps taken to build the capacity of the tripartite constituents and strengthen mechanisms and procedures, as well as challenges and good practices identified.***

## Colombia

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee is examining the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the Government's replies to the observations made by the social partners in 2016, which were included in its 2019 report. The Committee also notes the joint observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), received on 4 September 2019. It also notes the observations of the General Confederation of Labour (CGT), received on 16 September 2019. ***The Committee requests the Government to provide its replies to these observations.***

*Tripartism and social dialogue in the context of the COVID-19 pandemic.* The Committee notes the detailed information provided by the Government in its supplementary report on the tripartite consultations held within the framework of the various subcommittees of the Standing Committee for Dialogue on Wage and Labour Policies (CPCPSL) on the labour measures adopted to mitigate the effects of the pandemic. In particular, the Government refers to the tripartite consultations held on such subjects as measures to prevent job losses and the follow-up to the complaints made relating to the suspension of contracts, the imposition of unpaid leave by the employer and dismissals. The Government also reports the adoption of the Labour Mediation Strategy during the COVID-19 Period, in the context of which 70 cases have been dealt with, as well as the establishment on 30 July of the Employment Mission, which will benefit from ILO technical assistance with a view to developing strategies and instruments to improve employment in the country. The Committee also notes the detailed information provided by the Government concerning the progress made by the Special Committee for the Handling of Conflicts referred to the ILO between 2012 and 2020, as the Special Committee continued to hold virtual meetings during the quarantine period established due to the pandemic. The Committee further notes the detailed information provided by the Government in its supplementary report on the four sessions of the Subcommittee on International Labour Matters held between March and September 2020, in which the discussions covered, among other subjects: the different measures adopted by ILO Member States to address the impact of the pandemic on the labour market; the implementation of technical cooperation activities in the country with ILO participation; the supplementary reports on ratified Conventions; the follow-up to the implementation of the Domestic Workers Convention, 2011 (No. 189), and particularly measures to mitigate the impact of the pandemic on domestic work. In the context of the global COVID-19 pandemic, the Committee recalls the broad guidance contained in international labour standards. The Committee encourages Member States to engage in broader tripartite consultation and social dialogue to provide a solid basis for the development and implementation of effective responses to the deep-rooted socio-economic effects of the pandemic. ***The Committee invites the Government to continue providing updated information on the measures adopted in relation to tripartite consultations within the context of the COVID-19 pandemic, and particularly those intended to build the capacity of constituents and strengthen tripartite mechanisms and procedures, in conformity with Article 4 of the Convention and with Paragraphs 3 and 4 of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), and the challenges and good practices identified.***

*Article 3(1) of the Convention. Election of the representatives of the social partners.* In its previous comments, the Committee requested the Government to indicate the measures that had been adopted to conduct the trade union census envisaged in section 5 of Act No. 278 of 30 April 1996. In this regard, the Committee notes the Government's indication that the census is the tool through which the representativeness of trade union confederations is determined on the various tripartite bodies in the country. The Committee notes with ***interest*** that in 2017 a trade union census was carried out for the first time in over 30 years. Since certain discrepancies were identified following the verification of the results, the Ministry of Labour initiated a verification process in which the data on the number of union members found by the trade union census carried out by the Ministry of Labour was compared with the information provided by union confederations. The Government reports the holding of regular workshops with union confederations in which they are consulted and their views are taken into consideration. The Government adds that most of the union confederations in the country were also consulted regarding the methodology used during the verification process. The Government adds that, as a result of the verification process,

clearer information was obtained on, among other subjects, trade union registers that had been annulled, those that were active and inactive, the findings of the census and organizations that are not members of confederations. The Government indicates that since March 2018 information on the findings of the census and the implementation of the verification process has been published in quarterly bulletins. However, the Committee notes the Government's indication that, as significant differences were identified between the information provided by trade union confederations and the findings of the census, the verification process has not yet been completed. The Government adds that the objective is to prevent any organization registered with the Ministry of Labour being able to claim that it speaks for the union movement. In this respect, the Government expresses its commitment to maintaining, together with the trade union confederations, a mechanism for the regular updating of the data of the trade union census. ***The Committee requests the Government to continue providing detailed and updated information on the measures adopted within the framework of the process of the verification of the Ministry of Labour's trade union census, and its findings.***

*Article 5. Effective tripartite consultations.* The Committee notes the detailed information provided by the Government on the tripartite consultations held between 2017 and 2019 on the matters relating to international labour standards covered by *Article 5(1)* of the Convention in the context of the Tripartite Subcommittee on International Labour Matters of the CPCPSL. With reference to the re-examination of unratified Conventions, the Government indicates that tripartite consultations have been held on the possible ratification of the Workers' Representatives Convention, 1971 (No. 135), the Rural Workers' Organisations Convention, 1975 (No. 141), the Nursing Personnel Convention, 1977 (No. 149), and the Maternity Protection Convention, 2000 (No. 183). The Government indicates that the process of the ratification of Conventions Nos 149 and 183 is currently proceeding in the Congress of the Republic. Tripartite consultations have also been held on the measures necessary to examine the potential ratification of the Maritime Labour Convention, 2006 (MLC, 2006). The Government indicates that during the tripartite consultations it was also agreed to adopt measures to focus its efforts on analysis of compliance with ratified Conventions. The Government refers to the organization of various activities relating to international labour standards within the framework of the Subcommittee on International Labour Matters, such as capacity building on the ILO Standards Review Mechanism (SRM).

However, the Committee notes the CGT's indication that tripartite consultations have not been held on proposals for the denunciation of ratified Conventions (*Article 5(1)(e)),* on reports to be made to the Office pursuant to article 19 of the ILO Constitution or on unratified Conventions and Recommendations to which effect has not yet been given, in accordance with Paragraph 5(e) of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152). The CGT also considers that technical and financial assistance is necessary to increase the frequency of the tripartite consultations held in the Subcommittee on International Labour Matters. With regard to the manner in which the views of the representative organizations are taken into account during the tripartite consultations, the Government indicates that, under the terms of Act No. 278 of 1996, the decisions of the CPCPSL are adopted by consensus by the representative parties. The Government indicates that the claims of each of the actors in the CPCPSL are taken into consideration and voted upon, with a view to ensuring effective tripartite consultations, in accordance with the Convention. ***The Committee requests the Government to continue providing updated and detailed information on the content and outcome of the tripartite consultations held on all the matters relating to international labour standards covered by Article 5(1) of the Convention.***

## Democratic Republic of the Congo

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)

The Committee notes the Government's report sent in June 2019, in response to comments formulated in previous observations, starting in 2013. With regard to the serious failure of the obligation to submit the instruments adopted by the Conference, laid down in article 19(5) and (6) of the ILO Constitution, the Government indicates its commitment to submitting the instruments adopted by the International Labour Conference to the competent authorities, in full respect of the provisions of the Convention. It also supplies a list of representative organizations of employers (three organizations) and of workers (12 organizations), indicating that they participated in the drafting of the reports. The Committee nevertheless notes with ***regret*** that the Government's report contains no response to the Committee's previous comments, reiterated since 2013, requesting the Government to provide detailed information on the content of the consultations and the recommendations made by the social partners on each of the matters listed in *Article 5(1)* of the Convention. ***Noting that the Government has not provided for many years any information on the practical application of the Convention, the Committee again requests the Government to provide information on the consultations held with the social partners concerning the proposals made to Parliament upon the submission of instruments adopted by the***

***Conference (Article 5(1)(b) of the Convention. It again requests the Government to provide detailed information on the frequency, the content and the results of the tripartite consultations held on the questions concerning international labour standards covered by the Convention and other ILO activities, in particular with regard to questionnaires concerning items on the agenda of the Conference (Article 5(1)(a)); the submission of instruments adopted by the Conference to the Parliament (Article 5(1)(b)); the re-examination, at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given (Article 5(1)(c); and reports on the application of ratified Conventions (Article 5(1)(d)).***

*COVID-19.* The Committee notes that as a result of the COVID-19 pandemic, tripartite consultations on international labour standards may have been postponed. With that in mind, the Committee recalls the guidance provided by international labour standards and encourages the Government to use tripartite consultations and social dialogue as a solid basis for formulating and implementing effective responses to the profound socio-economic repercussions of the pandemic. ***The Committee invites the Government to provide, in its next report, up-to-date information on all measures taken in this regard, particularly as concerns the measures taken to strengthen constituents' capacities and also to improve national tripartite mechanisms and procedures. It also requests the Government to provide information on the challenges encountered and good practices identified regarding application of the Convention during and after the pandemic period.***

***[The Government is asked to reply in full to the present comment in 2021.]***

## Djibouti

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 3(1) of the Convention. Participation of representative organizations*. The Government reiterates in its report that two legislative texts were drafted in 2013 in consultation with the social partners. These texts were referred to the National Council for Labour, Employment and Social Security (CONTESS) in 2014. The aim of the first text is to create an institutional framework for setting the issue of representativeness as provided by section 215 of the Labour Code, which establishes that "the representative nature of trade union organizations shall be determined by the outcome of workplace representation elections" and that "the ranking … thus determined by the workplace elections shall be recorded in an order issued by the Minister in charge of labour". Nevertheless, the draft order is in preparation, hence the criteria for determining the representativeness of employers' and workers' organizations is still to be established. The aim of the second text is to reinforce the electoral procedures to be followed in occupational or national elections, with free and independent elections which are essential for ensuring the formation of legitimate workers and employers' organizations and also their representativeness. The Government points out that the two draft texts have not been approved by CONTESS, which assigned the task of examining the drafts to the standing committee but the latter did not adopt them. The Government indicates that it will keep the Office informed of any developments in the matter. ***The Committee refers to its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and expresses the firm hope that the Government will adopt the above-mentioned draft texts as soon as possible so that objective and transparent criteria can be established for appointing workers' representatives to national and international tripartite bodies, including the International Labour Conference.***

*Article 4(2). Financing of training.* The Government indicates that a seminar on labour law was held for members of grassroots unions affiliated to the two most representative federations of workers' unions in Djibouti. The seminar took place from 28 to 31 August 2016 at the National Institute of Public Administration and was funded by the executive secretariat responsible for reform of the administration. In addition, the Operational Action Plan 2014–18, adopted under the national employment policy, includes a component of training on labour legislation for trade union representatives and employers. ***The Committee requests the Government to continue providing information on appropriate arrangements made for the financing of any necessary training for participants in consultation procedures, as provided for by the Convention.***

*Article 5. Tripartite consultations required by the Convention. Frequency of tripartite consultations.* The Committee notes the detailed record of the meeting of CONTESS that took place on 27 and 28 November 2016, which the Government attached to its report. In this regard, it notes the agenda of the meeting, which included draft texts for the implementation of the Labour Code and also the discussion of unratified Conventions (*Article 5(1)(c)* of the Convention). In this regard, the Committee notes with ***interest*** the ratification proposals adopted unanimously concerning the Maritime Labour Convention, 2006 (MLC, 2006), and the Protocol of 2014 to the Forced Labour Convention, 1930. ***The Committee requests the Government to continue providing detailed information on the content and outcome of the tripartite consultations held on each of the matters referred to in Article 5(1) of the Convention, and in particular to continue to send copies of the records of CONTESS meetings.***

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

# Dominican Republic

## Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019. To this end, the Committee notes the observations of the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Dominican Workers (CNTD) and the National Confederation of Trade Union Unity (CNUS), received on 5 September 2019 and 1 October 2020. ***The Committee requests the Government to send its comments in this respect.***

*Tripartism and social dialogue in the context of the COVID-19 pandemic*. The Committee notes that, in their observations of 2020, the CASC, CNTD and CNUS state that the Government has taken measures to deal with the effects of the pandemic, which impact workers and production in general, without prior consultation of the social partners, except in exceptional cases, (Recommendation No. 152, Paragraph 5(c)). They report that workers' organizations have only been consulted on those measures, the approval of which requires a tripartite vote, such as the withdrawal of funds from the Dominican Institute for Protection and Prevention of Occupational Hazards (IDOPRIL). In relation to the social support measures implemented by the Government to mitigate the effects of the pandemic, the trade union organizations state that the social partners were consulted separately on this matter, which led to suspicion on the part of the workers' organizations and the exclusion of the representatives of workers in a situation of increased vulnerability, such as migrant workers, domestic workers, persons with disabilities and self-employed workers. In addition, they report that on 11 September 2020, tripartite consultations were held within the framework of the Labour Advisory Council, where agreement was reached on the joint implementation of economic, labour and health measures to address the crisis that has been affecting the country's tourism sector for years (in which there are more than 500,000 formal and informal workers) and which has been exacerbated by the pandemic. The Committee recalls the broad guidance provided by international labour standards, and encourages Member States to engage in tripartite consultations and broad social dialogue as a solid basis for the development and implementation of effective responses to the profound socio-economic impact of the pandemic. ***The Committee invites the Government to provide up-to-date information on the measures adopted with a view to mitigating the impact of COVID-19 and the measures to contain it. In particular, it requests the Government to report on the measures adopted to build the capacity of constituents, and strengthen the tripartite mechanisms and procedures, as well as on the challenges and good practices identified, in conformity with Article 4 of the Convention and Paragraphs 3 and 4 of Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).***

*Article 5 of the Convention. Effective tripartite consultations.* In response to the Committee's previous comments, the Government has provided a copy of the "Operating Regulations for the Tripartite Round Table on issues relating to international labour standards", which were drafted with the technical assistance of the ILO; as well as copies of the meeting reports of the Tripartite Round Table. Under the provisions of section 2 of the Regulations, the functions of the Tripartite Round Table include: analysing and discussing compliance with ratified Conventions; discussing and developing the reports on ratified Conventions; discussing and promoting compliance with recommendations issued by the ILO supervisory bodies; and analysing the content and possible impact of unratified Conventions and the Recommendations to which effect has not yet been given. Section 6 of the Regulations provides that the Tripartite Round Table shall meet at least once every three months. The Committee notes the Government's information that Tripartite Round Table began operating on 20 June 2018. It also notes the notifications and reports of the seven working meetings that took place between 20 June 2018 and 16 July 2019, in which tripartite consultations were held on several active cases before the Committee on Freedom of Association. The Committee observes, however, that the Government has not provided information in its report on the effective tripartite consultations on the issues covered by *Article 5(1)* of the Convention: (a) government replies to questionnaires concerning items on the agenda of the International Labour Conference; (b) the submission of instruments to the National Congress; (c) the re-examination at appropriate intervals of unratified Conventions and of Recommendations; (d) the reports on ratified Conventions to be made to the Office under article 22 of the ILO Constitution; and (e) proposals for the denunciation of ratified Conventions.

The Committee notes that, in their observations, the CASC, CNTD and CNUS maintain that tripartism has deteriorated over recent years and that workers' organizations have not been consulted on important labour-related decisions. The workers' organizations refer to their participation in informal meetings in December 2019 and August 2020 with various authorities and domestic workers' organizations in order to discuss the application of the Domestic Workers Convention, 2011 (No. 189), including methodology

for determining domestic workers' wages. In this regard, they report that such meetings were held without the participation of the employers' organizations. Lastly, the workers' organizations refer to the Tripartite Round Table on conflict resolution in the Dominican Republic and maintain that it is only used to hold information meetings. They indicate that, consequently, on 16 July 2019, the CNUS and CNTD withdrew their participation from that Round Table, pending the finalization of responsibilities and concrete solutions to the conflicts raised at its meetings. ***Therefore, the Committee requests the Government to transmit detailed and up-to-date information on the frequency and content of the consultations held within the framework of the Tripartite Round Table on issues relating to international labour standards relating to the application of the Convention, as well as on the outcome of those.***

## Ecuador

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee is examining the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019. The Committee also takes note of the technical assistance mission carried out at the Government's request by the Office in December 2019 with a view to assisting the tripartite constituents in drawing up a road map to strengthen social dialogue and provide specific replies to the supervisory bodies' comments.

The Committee notes the observations formulated by the National Federation of Education Workers (UNE) and Public Services International (PSI) in Ecuador, received on 29 August 2019, as well as the Government's replies to those, included in its supplementary report of 2020. It also notes the observations of PSI, received on 28 September 2020, and of the Ecuadorean Confederation of Unitary Class Organizations of Workers (CEDOCUT) and the Trade Union Association of Agricultural, Banana and Peasant Workers (ASTAC), received on 1 October 2020, relating to the application of the Convention. ***The Committee requests the Government to provide its replies in that respect.***

*Tripartism and social dialogue in the context of the COVID-19 pandemic.* The Committee notes the information provided by the Government in its supplementary report relating to the tripartite consultations held on 12 and 25 June 2020 within the framework of the National Labour and Wages Council (CNTS). The Government indicates that the objective of those consultations was to present the guidelines issued by the Ministry of Labour to mitigate the effects of the pandemic and to receive proposals from workers' and employers' representatives to maintain employment during the health emergency. The Government states that the members of the CNTS agreed on the establishment of a technical committee with the participation of two representatives of the employer sector and two representatives of the worker sector with a view to developing proposals to ensure the sustainability of employment and enterprises, and to address the situation facing the country as a result of the COVID-19 pandemic. The Committee notes, however, that PSI states in its observations that, since March 2020, under the decreed state of emergency, the Government has taken many administrative measures and passed various executive decrees without holding tripartite consultations on those. PSI reports that these measures have led to a regression in workers' rights, especially those of public sector workers. In this respect, it refers, inter alia, to the introduction of the possibility of reducing the working hours and remuneration of public sector workers, and to the abolishment of various posts in that sector. PSI also refers to the adoption of the Organic Act on Humanitarian Support to combat the crisis resulting from COVID-19 and states that it introduces regressive reforms to the Labour Code. For their part, ASTAC and CEDOCUT report that the workers' organizations were not consulted prior to the adoption, on 17 September 2020, of Ministerial Agreement No. MDT-2020-185, which contains a new method of calculating the basic unified wage and sets out the possibility of freezing it in 2021. ASTAC and CEDOCUT emphasize the need to adopt measures to guarantee the representation of the workers' and employers' sectors in the tripartite bodies, as well as their real and effective participation in the development of standards (see Paragraph 5(c) of Recommendation No. 152). In this context, the Committee recalls the broad guidance provided by international labour standards and encourages Member States to promote and participate in broader tripartite consultation and social dialogue as a solid basis for the preparation and implementation of effective responses to the deep-rooted socio-economic impact of the pandemic. ***The Committee requests the Government to send detailed and updated information on the tripartite consultations held regarding the measures taken to address the socio-economic impact of the pandemic. It also invites the Government to provide in its next report detailed information on measures taken to build the capacity of the constituents, and strengthen tripartite mechanisms and procedures, as well as on the challenges and good practices identified.***

*Articles 1, 2 and 3(1) of the Convention. Adequate procedures. Election of the representatives of the social partners to the National Labour and Wages Council (CNTS).* In its previous comments, the Committee

requested the Government to provide information on the consultations held to establish procedures which ensure effective tripartite consultations. It also requested the Government to send its comments on the observations made by PSI and UNE, in which they indicate that they are not recognized as representative organizations of the workers in the public sector. PSI and UNE also considered that the Government has opted systematically to disregard workers' organizations that might be an obstacle to the implementation of its reforms but has intervened directly in the establishment of organizations that give legitimacy to its actions. PSI and UNE claimed that the Government had not held effective consultations with them and had not replied to the various proposals put forward concerning the creation of a forum for bipartite dialogue for the public sector incorporated in what was previously the National Labour Council. In its 2020 report, the Government indicates that, in accordance with Ministerial Agreement No. MDT-044 of 30 January 2016, amendments were made to section 10 of Ministerial Agreement No. MDT-2015-0240 of 20 October 2015 on the organization, composition and operation of the CNTS. Specifically, the phrase "trade union federations of legally recognized working persons" was replaced with "federations, confederations, fronts, organizations and/or unions of most representative working persons at the national level". The Government indicates that the CNTS is thereby composed of those organizations of the most representative workers at the national level. In this regard, the Committee notes that, in its 2020 observations, PSI reports the lack of an adequate procedure and political will to determine the "most representative organizations", resulting, in practice, in the absence of an institution for tripartite consultation on international labour standards. Furthermore, UNE and PSI reiterate that they are still not recognized as representative organizations of the public sector, and nor are their affiliate organizations. In its reply, the Government indicates that the Ministry of Labour has a register of workers' organizations, in which the level of representation is determined by the number of workers represented by that organization according to institutional records. The Committee recalls that the term "the most representative organizations of employers and workers" as provided for in *Article 1* of the Convention "does not mean only the largest organization of employers and the largest organization of workers." If in a particular country there are two or more organizations of employers or workers which represent a significant body of opinion, even though one of them may be larger than the others, they may all be considered to be "most representative organizations" for the purpose of the Convention. In such cases, governments should endeavour to secure an agreement of all the organizations concerned in establishing the consultative procedures (see 2000 General Survey on tripartite consultations, paragraph 34).

With regard to the procedure for selecting representatives to the CNTS, section 10(1) of the 2015 Ministerial Agreement provides that the Minister of Labour shall convene "the employers' and workers' organizations in order that, by means an elector appointed by each of them, the principal and alternate representatives of the CNTS may be elected." If no agreement is reached, the Minister of Labour calls a second election. In this respect, the Committee notes that, PSI and UNE report that they did not obtain a response from the Government to the nomination they presented for the designation of new representatives of the CNTS in 2018. In this regard, the Government indicates that PSI has not been considered a member of the CNTS, as it does not meet the requirements established for membership. The Committee notes that ASTAC and CEDOCUT denounce the introduction of various legislative reforms in recent years that hinder the holding of tripartite consultations, and in particular the representation of workers' organizations freely elected by their organizations, on various national tripartite bodies, such as the Board of Directors of the Ecuadorian Social Security Institute (IESS) in which the worker sector has not been represented since May 2018. The Committee also notes that ASTAC and CEDOCUT refer to the "Report on violations of trade union rights" of the International Trade Union Confederation (ITUC), which states that between 2013 and 2015 there was a fall in representation and a de-institutionalization of social dialogue and tripartism. In addition, the same report denounces the emergence of workers' organizations parallel to the existing ones, and close to the Government. Lastly, the Committee notes that the road map presented by the technical assistance mission carried out in December 2019 proposed, as a central point, the inclusion of all representative trade union organizations in the CNTS. The Committee emphasizes that the participation of all the representative trade unions in the CNTS is a fundamental element for carrying out effective consultations and the application of the Convention in general. ***In the light of the observations of the workers' organizations, the Committee requests the Government to adopt the measures necessary to ensure that all the country's "most representative organizations" of employers and workers can participate in the CNTS and the other consultative bodies of a tripartite nature, such as the Board of Directors of the IESS, pursuant to Recommendation No. 152, Paragraph 5(c). The Committee also requests the Government to adopt the measures necessary to obtain the agreement of all organizations concerned, including workers' organizations freely elected by their organizations' members, with the establishment of the consultative procedures regarding the criteria used to determine representativeness among those organizations.***

*Article 5. Effective tripartite consultations.* The Committee notes the information provided by the Government relating to tripartite consultations held on international labour standards between June 2019 and June 2020. The Government indicates that in February 2019 tripartite consultations were held, within the working groups established for this purpose, on comments to formulate on the draft Violence and

Harassment Convention, 2019 (No. 190), and draft Violence and Harassment Recommendation, 2019 (No. 206), during the 108th Session of the International Labour Conference. The Government also reports that, based on the support expressed by the social partners on 19 September 2019, a technical report was sent to the Ministry of Foreign Relations and Human Mobility for the adoption of the measures necessary for the ratification of Convention No. 109 and Recommendation No. 206. In addition, the Government reports that various national institutions are participating in the preparation of a report on the potential ratification of the Protocol of 2014 to the Forced Labour Convention. The Government indicates that, once the report has been finalized, it will be sent to the National Assembly and other national bodies for discussion on potential ratification of the Protocol. The Committee notes, however, that the Government has not indicated whether there are plans to hold tripartite consultations relating to the potential ratification of the Protocol. With regard to the consultations held on reports on ratified Conventions, the Government indicates that once these reports are sent to the Office, they are brought to the attention of the employers' and workers' organizations, through the representatives of these sectors on the CNTS. In this respect, the Committee draws the Government's attention to the fact that "in order to be 'effective', consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted… The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions" (see the 2000 General Survey on tripartite consultation, paragraph 31).

The Committee notes, however, that UNE and PSI maintain that they were not consulted with regard to international labour standards or the Government's request for technical assistance from the Office for the reform of the Labour Code, or other labour law reforms introduced within the CNTS. The Government indicates that during 2019 it held dialogues with workers' organizations about the proposed labour reforms and their benefits. In addition, in its 2020 supplementary report, the Government states that on 25 May 2020, it held a meeting with various public sector workers' organizations affiliated with PSI, at which matters such as the visit of the ILO technical mission to the country and the ratification process of Convention No. 190 were addressed. The Government reports tripartite consultations held throughout 2019 within the CNTS relating to the review and adoption of labour reforms and wage determination for 2020. It also refers to the establishment, under Ministerial Agreement No. MDT-2018-0008, of four standing social dialogue working groups, including the standing public sector working group. The Government indicates that, on 15 June 2018, PSI requested to participate in the public sector working group, which the Government acknowledged via official letter No. MDT-MDT-2018-0535 of 18 July 2018. ***The Committee requests the Government to continue providing up-to-date information indicating the specific content and the outcome of the tripartite consultations held on all issues relating to international labour standards covered by Article 5(1)(a) to (e) of the Convention. Furthermore, in the light of the observations of UNE and PSI, the Committee requests the Government to send detailed information on the manner in which it is ensured that all the most representative organizations participate in those consultations. The Committee also requests the Government to provide information on the consultations held with the social actors on ways to improve the functioning of the procedures required under the Convention, including the possibility of establishing a schedule for the preparation of reports far enough in advance to enable the social partners to formulate their contributions in this respect (Article 5(1)(d)).***

## Fiji

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)

*Article 3 of the Convention. Election of representatives of employers and workers organizations.* In its previous comments, the Committee requested the Government to explain the manner in which the representative national workers' and employers' organizations have been able to determine their representatives. In this regard, the Committee notes the discussion that took place in the Conference Committee on the Application of Standards (the Conference Committee) in June 2019 concerning the application by Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Conference Committee called upon the Government to, inter alia, refrain from interfering in the designation of the representatives of the social partners on tripartite bodies and to reconvene the Employment Relations Advisory Board (ERAB) without delay, in order to start a legislative reform process. The Government indicates in its report that, according to the 2007 Employment Relations Act, the Minister for Employment is the appointing authority for the ERAB, and representatives of workers and employers are appointed from among persons nominated by workers' and employers' organizations. It adds that there is no Government interference in the designation of representatives of the social partners to the ERAB. In this context, the Committee notes section 8(3) of the 2007 Act, which provides that, in making appointments to the ERAB, "… the Minister may take into account the principles of equality set out in section 38 of the Constitution, necessary for the effective operation of the Board." The Government reports that, after the expiration of the ERAB membership in October 2019, it invited the social partners

to submit their nominees to the Minister. The Fiji Commerce and Employer's Federation (FCEF) submitted their nominees on 21 October 2019 and 23 October 2019, respectively, while the Fiji Trades Union Congress (FTUC) submitted their nominees on 30 October 2019. The Committee nevertheless refers to its 2019 observation in relation to the application of Convention No. 87, in which the FTUC observed that the Government provided no indication regarding when the appointment of the ERAB members would be made, despite the urgency of the situation, also recalling the observations of the International Trade Union Confederation (ITUC),which expressed concern about government manipulation of national tripartite bodies, thus curtailing the possibility of genuine tripartite dialogue. ***Referring to its 2019 observation under Convention No. 87, the Committee expresses its firm hope that the Government will refrain from any undue interference in the nomination and appointment of representatives of the social partners to the ERAB, and will take steps to ensure that the social partners are able to freely designate their representatives. The Committee urges the Government to take steps to appoint the ERAB members without delay so that the ERAB may reconvene and hold regular tripartite consultations for the purposes of the procedures covered by the Convention. It requests the Government to provide updated information on progress made in this regard. In addition, the Committee requests the Government to describe the manner in which the discretion provided for under section 8(3) of the 2007 Employment Relations Act has been applied in practice.***

*Article 5(1) of the Convention. Effective tripartite consultations.* The Committee notes the Government's indication that meetings of the ERAB were held regularly during the reporting period despite the boycott of the FTUC and its withdrawal from ERAB meetings in June 2018, February 2019 and August 2019. In this respect, referring to its 2019 observation on Convention No. 87, the Committee notes that, according to the FTUC, the Government's reference to boycott clearly reveals that there remain issues in the appointment process of ERAB members. The Committee notes the information provided by the Government with regard to the tripartite consultations held within the ERAB during the reporting period. The Government reports on the submission to Parliament of the questionnaire on the abrogation and withdrawal of: the Night Work (Women) Convention, 1919 (No. 4); the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); the Protection against Accidents (Dockers) Convention, 1929 (No. 28); the Night Work (Women) Convention (Revised), 1934 (No. 41); the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60); and the Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67). The Government indicates that the Conventions concerned were abrogated or withdrawn. In addition, tripartite consultations were held with regard to the ILO Centenary ratification campaign and proposals of newly adopted instruments pending submission to Parliament, including the Violence and Harassment Convention, 2019 (No. 190), were discussed. With respect to the re-examination of unratified Conventions, the Government indicates that it is envisaged to ratify the Protocol of 2002 to the Occupational Safety and Health Convention, 1981; the Labour Statistics Convention, 1985 (No. 160) and its accompanying Labour Statistics Recommendation, 1985 (No. 170). Finally, the Government indicates that it remains committed to holding tripartite consultations with regard to the reports on the application of ratified Conventions *(Article 5(1)(d))* and the proposals for denunciation of ratified Conventions *(Article 5(1)(e))*. The Committee notes the ratification of the Violence and Harassment Convention, 2019 (No. 190) on 25 June 2020. The Government has not, however, provided detailed information as requested on the content and the outcome of the tripartite consultations held under this Article of the Convention. ***The Committee therefore requests the Government to provide updated and detailed information on the content and outcome of the tripartite consultations held on all matters concerning international labour standards covered by the Convention, particularly relating to the questionnaires on Conference agenda items (Article 5(1)(a)); the submission of instruments adopted by the Conference to Parliament (Article 5(1)(b)); the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given (Article 5(1)(c)); reports to be presented on the application of ratified Conventions (Article 5(1)(d)); and the proposal for the denunciation of Conventions (Article 5(1)(e)).***

In the context of the global COVID-19 pandemic, the Committee recalls the comprehensive guidance provided by international labour standards. It encourages Member States to engage in tripartite consultation and social dialogue more broadly as a solid foundation for developing and implementing effective responses to the profound socio-economic impacts of the pandemic. ***The Committee invites the Government to provide updated information in its next report on measures taken in this respect, including with regard to steps taken to build the capacity of the tripartite constituents and strengthen mechanisms and procedures, as well as challenges and good practices identified.***

## Grenada

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 5 of the Convention. Effective tripartite consultations.* The Committee recalls that, in its previous comment, it had requested the Government to provide detailed information on each of the tripartite consultations held on matters concerning international labour standards covered by the Convention. The Government indicates in its report that tripartism is working well in the country to the extent that it has moved towards establishing a Committee of Social Partners. The said Committee includes civil society organizations and the conference of churches; it is responsible for the monitoring of the IMF Structural Adjustment Programme 2014–16 in Grenada, including labour reforms. Additionally, the Government specifies that a comprehensive review of the Labour Code was conducted during the 2014–15 period. Moreover, the Government recalls that, pursuant to section 21(2) of the Employment Act, the functions of the Labour Advisory Board reflect the provisions of *Article 5(1)* of the Convention. ***The Committee requests the Government to provide detailed information on the activities of the Labour Advisory Board on the tripartite consultations on international labour standards covered by the Convention, including full particulars on the consultations held on each of the matters listed in Article 5(1) of the Convention. The Government is also requested to indicate the intervals at which the above-mentioned consultations are held, and the nature of the participation by the social partners during these consultations.***

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

## Madagascar

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 2 and 5 of the Convention. Effective tripartite consultations.* In its previous comments, the Committee requested the Government to provide detailed information on the subjects and outcome of the tripartite consultations held on each of the items set out in *Article 5(1)*. The Government indicates that it is making efforts to ensure compliance with the obligations deriving from the Conventions that it has ratified, including Convention No. 144, and recognizes that tripartite consultations on international labour standards were not undertaken effectively. However, it emphasizes that significant improvements have been implemented following a workshop to strengthen capacities on international labour standards and for the preparation of reports organized by the ILO on 22 and 23 October 2016. In 2016, the Government replied to the Committee's comments on Conventions Nos 29, 87, 98, 100, 105, 111 and 182. It adds that, although the social partners were consulted before the final replies were sent, they made no observations in that regard. In 2017, the Government replied to the Committee's comments concerning Conventions Nos 6, 26, 81, 87, 88, 95, 97, 98, 124, 129, 159 and 173. Following the tripartite consultations held, the observations made by the most representative workers' organizations were included in the final replies. With regard to the re-examination of unratified Conventions and of Recommendations to which effect has not yet been given, the Government indicates that tripartite consultations have been held on 11 instruments respecting working time (Conventions Nos 1, 30, 47, 106 and 175 and Recommendations Nos 13, 98, 103, 116, 178 and 182). The Government adds that it sent its replies to the most representative organizations of employers and workers, but that the Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE) was the only one to provide comments on this subject. It adds that, between 28 February and 1 March 2017, the Ministry of Labour organized, with ILO support, a tripartite workshop to validate the situation with regard to the Labour Relations (Public Service) Convention, 1978 (No. 151). This review was validated unanimously by the representatives of the three partners present. Furthermore, a steering committee to promote Convention No. 151 was established to follow the process of ratification and engage in advocacy with the competent authorities, including the Government and Parliament. The Government adds that it has responded to the abrogation of Conventions Nos 21, 50, 64, 65, 86 and 104 and to the withdrawal of Recommendations Nos 7, 61 and 62, included on the agenda of the 107th Session of the International Labour Conference in 2018. It specifies that these responses were communicated to the most representative social partners, but that the latter made no observations on this subject. In its 2000 General Survey, *Tripartite Consultation International Labour Standards*, paragraph 71, the Committee recalls that *Paragraph 2(3)* of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), specifies that consultations may only be undertaken through written communications, "where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient". The Committee notes with ***interest*** that the Government, with ILO support, organized a workshop on 12, 13 and 14 September 2017 to validate the comparative study of the legislation in force and the provisions of the Maritime Labour Convention, 2006 (MLC, 2006), and the Work in Fishing Convention, 2007 (No. 188), with a view to their ratification. It adds that two roadmaps on the ratification of the MLC, 2006, and Convention No. 188 were unanimously approved by the tripartite partners present. ***The Committee requests the Government to continue providing updated information on the manner in which it ensures effective tripartite consultations, as well as on the content and outcome of the tripartite consultations held on each of the issues covered by Article 5(1). It also requests the Government to keep it informed of any developments relating to the ratification of Conventions Nos 151, 188 and the MLC, 2006.***

*Article 3. Choice of the representatives of employers and workers by their respective organizations.* The Committee notes that the implementation of Decree No. 2011-490 on trade union organizations and

representativity implies for the tripartite partners the implementation of various types of action, including the holding of elections for staff delegates at the enterprise level within the territory of Madagascar by the Ministry of Labour, the convening of the social partners for an indication of the provisional results, and the consolidation by ministerial order of the definitive results for national and regional representation. The Government indicates that, in accordance with this process, the elections of staff representatives were launched in 2014 throughout Madagascar. It adds that Order No. 34-2015 to determine trade union representativity for 2014 and 2015 was adopted and was issued in February 2014. However, the Order has been contested by certain workers' organizations, including the General Confederation of Malagasy Trade Unions (FISEMA), FISEMARE and the Revolutionary Malagasy Union (SEREMA), challenging the outcome of the ballot, which placed the Christian Confederation of Malagasy Trade Unions (SEKRIMA) first among the most representative unions at the national level. In March 2015, these unions lodged an appeal for the result to be set aside. The Government explains that, as the appeal was suspensive in its effect, the application of the Order was suspended until the court issued its ruling rejecting the appeal in 2017. Moreover, as the establishment of the various labour-related bodies is conditional upon representativity, as they involve tripartite representation, such as in the case of inter-enterprise medical services management councils and the executive council of the National Social Insurance Fund (CNAPS), the tripartite actors concerned agreed to adopt an alternative solution. In this context, the Government indicates that all the representatives of the various organizations appointed to the different social dialogue structures in existence, and the labour-related bodies referred to above, were subject to tacit renewal of their mandates. ***The Committee requests the Government to make every effort, in consultation with the social partners, to ensure that tripartism and social dialogue are promoted so as to facilitate procedures that guarantee effective tripartite consultations (Articles 2 and 3). In this respect, it requests the Government to provide updated information on any developments relating to the choice of employers' and workers' representatives for the purposes of the procedures covered by the Convention, including the dates and organization of their elections. The Committee also requests the Government to provide a copy of the Order that is in force with its next report.***

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

## Serbia

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee examines the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the Serbian Association of Employers (SAE), the Confederation of Autonomous Trade Unions of Serbia (CATUS) and the Trade Union Confederation "Nezavisnost", transmitted by the Government together with its 2019 report. It also notes the observations of the CATUS, transmitted by the Government together with the supplementary information in 2020.

*Articles 2 and 5 of the Convention. Effective tripartite consultations.* The Committee notes that, following the recommendations and the report of the Conference Committee at its 107th Session in June 2018, a tripartite workshop on the application of Convention No. 144 was held on 25 January 2019, with technical assistance from the ILO. The workshop was attended by representatives of trade unions and employers' associations as well as the Secretary of the Social and Economic Council of the Republic of Serbia (SEC). It was agreed at the workshop that issues concerning the preparation of the delegation of Serbia for its participation at the International Labour Conference (ILC) would be addressed in person through tripartite consultations in the SEC to be held at least two times a year (before and after the ILC), in addition to issues dealt with through written communications . In this context, the Government indicates that the composition of the delegation and the platform for its participation will be discussed in person as a separate item to be placed on the agenda of the SEC. It adds that the consultations held during the SEC sessions will also address all other matters of relevance to cooperation with the ILO, including: replies to questionnaires; recommendations submitted to the competent authorities with regard to the submission of ILO Conventions and Recommendations in compliance with article 19 of the ILO Constitution; re-examination and review at regular intervals of unratified Conventions and Recommendations not yet given effect to examine the measures to be taken, if any; issues that have arisen from the obligation of submission of national reports in compliance with article 22 of the ILO Constitution; and those concerning the proposed abrogation of ratified Conventions. The Government also reports that, on 25 September 2018, the SEC organized an Information Day at the National Assembly where discussions focused on, inter alia, strengthening social dialogue and building the capacities of the SEC and the social partners. The Committee notes that the SAE affirms that, during 2018 and the first half of 2019, tripartite consultations were held within the SEC with regard to different economic and social topics, which were formalized by the adoption of conclusions. The SAE argues, however, that the said conclusions were not implemented by the responsible national institutions. In this regard, the SAE emphasizes that the SEC, is the highest national institution of social dialogue and a legal platform, whose initiatives must be respected by the competent institutions.

The Committee also notes the information provided by the Government in its supplementary report with regard to the content of the tripartite consultations held during the five sessions of the SEC that took place between 17 March and 14 September 2020, including the adoption of the 2020 Work Plan for the SEC. In its observations, the CATUS submits that social dialogue in Serbia is still in its infancy. It considers that there is a need to adopt further measures to strengthen social dialogue in the country, stressing that the SEC is the appropriate body to ensure a transparent process of social dialogue where the views of the social partners may be heard and consensus may be reached. ***The Committee requests the Government to continue its efforts to take effective and time-bound measures to ensure effective tripartite consultations in conformity with the provisions of the Convention, and to report on the nature, content and frequency of consultations in relation to the matters within the scope of Article 5(1)(a)–(e) of the Convention.***

In the context of the global COVID-19 pandemic, the Committee recalls the comprehensive guidance provided by international labour standards. It encourages Member States to engage in tripartite consultation and social dialogue more broadly as a solid foundation for developing and implementing effective responses to the profound socio-economic impacts of the pandemic. ***The Committee invites the Government to provide updated information in its next report on measures taken in this respect, including with regard to steps taken to build the capacity of the tripartite constituents and strengthen mechanisms and procedures, as well as challenges and good practices identified in conformity with Article 4 of the Convention and Paragraphs 3 and 4 of Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).***

## Bolivarian Republic of Venezuela

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

***Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)***

The Committee recalls that the Governing Body, at its 332nd Session (March 2018), approved the appointment of a Commission of Inquiry to examine a complaint made under article 26 of the ILO Constitution alleging non-observance by the Government of the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Committee notes that the Commission of Inquiry completed its work in September 2019 and that its report was presented to the Governing Body, which took note of it at its 337th Session (October 2019).

The Committee notes the document submitted to the Governing Body (GB.340/INS/13) with the Government's reply to the Commission of Inquiry's report, and also the discussion which took place on this matter at the 340th Session (October 2020) of the Governing Body and which will continue at its next session in March 2021. In its reply, and in its report to the Committee, the Government states that it does not accept the recommendations of the Commission of Inquiry since compliance with them would entail the violation of the Constitution of the Republic, the separation of powers, the law, the independence, the sovereignty and the self-determination of the Bolivarian Republic of Venezuela. However, the Committee observes that the Government did not avail itself of the prerogative granted under the ILO Constitution – namely, to refer the complaint to the International Court of Justice within three months of receipt of the report. Moreover, the Committee observes that the Government expresses its readiness to improve its compliance with the Conventions ratified by the country on the basis of constructive suggestions from the ILO supervisory bodies and to receive technical assistance from the Office.

The Committee recalls that, in formulating comments on the application of the Convention by the Government of the Bolivarian Republic of Venezuela, it has been raising many of the issues examined by the Commission of Inquiry, which confirmed and examined in detail a number of the concerns raised by the Committee with regard to the application of this governance Convention. In this regard, the Commission of Inquiry considered in its report that, in light of the gravity of the issues raised, the situation and the progress achieved on its recommendations should be the subject of active supervision by the ILO supervisory bodies concerned. In particular, it stated that the Government must submit to the CEACR the corresponding reports on the application of the Conventions covered by the complaint for examination at its session in November–December 2020.

The Committee notes that the Commission of Inquiry, after finding that the Government did not provide evidence of compliance with the consultation requirements set out in the Convention, recommended that the authorities concerned take without further delay – and with implementation to be completed no later than 1 September 2020 – the necessary steps to ensure due and effective compliance with the consultation requirements set out in the Convention, and the ending of the exclusion from social

dialogue and consultation of the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and trade union organizations that are not close to the Government. In particular, the Commission recommended, through tripartite dialogue with the representative organizations of employers and workers:

(i) the establishment of effective tripartite consultation procedures. In light of the serious deficiencies in social dialogue in the country, taking into consideration the recognition by the Government itself of the need to create mechanisms for social dialogue, the Commission of Inquiry advised the establishment in the very near future of bodies or other institutionalized procedures for social dialogue to facilitate compliance with the obligations set out in the Convention, in relation to consultations to promote the application of international labour standards; and

(ii) the institutionalization of dialogue and consultation covering the subjects envisaged in all ratified ILO Conventions or relating to their application.

While noting that in its report the Government emphasizes its disagreement with the conclusions and recommendations of the Commission of Inquiry, the Committee recalls that on previous occasions when following up on recommendations of a Commission of Inquiry the Committee has observed that the ILO Constitution does not make the results of an inquiry subject to the consent of the State concerned. In this regard, the Committee has recalled that under article 32 of the Constitution, the only authority capable of affirming, varying or reversing the findings or recommendations of a Commission of Inquiry is the International Court of Justice, and that therefore, a government which chooses not to avail itself of the possibility of referring the matter to the International Court of Justice ought to take account of the conclusions and act upon the recommendations of the Commission of Inquiry, in light of the provisions of the ILO Constitution.

The Committee notes the observations, regarding the follow-up to the recommendations of the Commission of Inquiry and the application of the Convention, sent by the following organizations: the Independent Trade Union Alliance Confederation of Workers (ASI), received on 30 September 2020; the Confederation of Workers of Venezuela (CTV), received on 30 September 2020; FEDECAMARAS, with the support of the International Organisation of Employers (IOE), received on 1 October 2020; the Confederation of Autonomous Trade Unions (CODESA), the General Confederation of Labour (CGT) and the National Union of Workers of Venezuela (UNETE), received on 1 October 2020. Finally, the Commission takes note of the observations of the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP) received on 3 December 2020, stating that the CBST-CCP has managed, in coordination with the Government and despite adverse conditions, to maintain compliance with the Convention in the course of 2020. ***The Committee requests the Government to send its observations in this regard.***

*Articles 2, 5 and 6 of the Convention. Effective tripartite consultations.* The Committee notes that the Government once again states that it has always complied fully with the Convention and that the ILO supervisory bodies, including the Commission of Inquiry, are confusing the tripartite consultation provided for in the Convention on matters relating to the ILO with social dialogue in general, which the Government asserts that it also promotes. In this regard, the Committee notes with ***regret*** that, even though the conclusions of the Commission of Inquiry's report reminded the Government of the scope of the obligations contained in the Convention – conclusions to which the Committee refers – the Government does not provide any evidence of having held tripartite consultations on any of the matters referred to in *Article 5(1)* of the Convention, devoting its report to claiming that it promotes social dialogue in general. The Committee notes in this respect that the examples cited by the Government in its report to claim the existence of the aforementioned social dialogue (the Government indicates that it held meetings at the highest level with representatives of the employers, including FEDECAMARAS, CONSECOMERCIO and FEDEINDUSTRIA, and refers to public declarations by those representatives reportedly recognizing the existence of social dialogue with the Government), and also the measures connected with combating the pandemic that the Government describes (claiming that it has adopted them taking account of the various suggestions and recommendations of the various national sectors of production), do not contain any indication or evidence of compliance with the specific consultation requirements established in the Convention to promote the application of international labour standards.

At the same time, the Committee notes that the observations sent by FEDECAMARAS, the ASI, the CTV, UNETE, the CGT and CODESA allege that the Government is not complying with the tripartite consultation requirements contained in the Convention; they emphasize that the examples and measures referred to by the Government cannot be considered as effective social dialogue either; they express regret at the absence of social dialogue and tripartite consultation in the country; and they assert that the Government is unwilling to establish any tripartite mechanisms. In this regard, FEDECAMARAS indicates that the public declarations of its representatives referred to by the Government were transcribed partially and do not indicate the existence of agreement or of compliance with the Convention; and that it cannot be argued that either the limited meetings held between some of its representatives and the Government

to resolve operational issues in the context of the pandemic or the patchy responses aimed at tackling the crisis can be regarded as effective social dialogue.

With regard to the forwarding by the Government of its reports on the application of ratified Conventions to employers' and workers' organizations, the Committee notes that almost all of the social partners' observations criticize delays in delivery of the reports and the lack of any tripartite consultation or discussion in this regard. From the information provided by the Government the Commission can only note, regarding the communication of reports, the application of article 23(2) of the ILO Constitution, which a number of organizations claim is done too late for it to fulfil its function (for example, according to the notification of dispatch forwarded by UNETE, the CGT and CODESA, the reports were forwarded one day before the deadline established by the ILO Governing Body for sending them to the Committee).

The Committee observes, as the Commission of Inquiry already did, that even though the notifications of dispatch of the Government's reports to which it has had access refer to the Convention, the Government has not provided any evidence showing that these imply or are supported by the slightest intention of, or invitation to, genuine tripartite consultation. As regards the other matters for consultation referred to in *Article 5(1)* of the Convention to promote the application of international labour standards, the Government does not mention or provide any evidence or information on consultation procedures for complying with the Convention.

The Committee is therefore bound to note that the Government, once again, has not provided any information that gives evidence of compliance with the requirements of the Convention, either regarding effective consultations on matters relating to the ILO referred to in *Article 5(1)* or regarding the nature and form of consultation procedures in accordance with *Article 2(2)*.

In light of the above, the Committee notes with ***deep regret*** that no progress whatsoever has been made either with respect to compliance with the Convention or with respect to the implementation of the recommendations made by the Commission of Inquiry in this regard.

***The Committee is aware of the ongoing consideration being given by the Governing Body to the follow-up of the report of the Commission of Inquiry. In view of the grave violations of labour rights described above, the systematic failure to comply with a number of ILO Conventions and the serious lack of cooperation from the Venezuelan authorities with regard to its obligations, the Committee considers it critical that within the context of the ILO standards the situation in the country be given the full and continuing attention of the ILO and the ILO supervisory system in order to obtain robust and effective measures that can bring about compliance in law and in practice with the Conventions concerned.***

In the context of the COVID-19 pandemic, the Committee recalls the extensive guidance provided by international labour standards. The Committee encourages the Government to engage in the widest possible tripartite consultations and social dialogue as a sound basis for formulating and implementing effective responses to the profound economic and social effects of the pandemic. ***The Committee invites the Government to provide updated information in its next report on the measures taken in this respect, in accordance with the guidance provided in Article 4 of the Convention and Paragraphs 3 and 4 of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), including on capacity-building measures for the tripartite constituents and measures to reinforce mechanisms and procedures, and also on the challenges and good practices that have been identified.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 144** *(Afghanistan, Albania, Argentina, Armenia, Azerbaijan, Bahamas, Barbados, Belgium, Belize, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Central African Republic, China, China: Macau Special Administrative Region, Comoros, Congo, Denmark, Dominica, Ethiopia, France: New Caledonia, Ghana, Guyana, Iraq, Jordan, Kyrgyzstan, Liberia, Malaysia, Mexico, Netherlands: Aruba, Republic of Moldova, Saint Vincent and the Grenadines, Sierra Leone, Singapore).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 144** *(Egypt, Estonia, France: French Polynesia)*.

# Labour administration and inspection

## Albania

### Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2007)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

*COVID-19 measures.* The Committee notes the Government's statement in its report regarding the labour inspection activities related to COVID-19. In particular, the Government indicates that the State Labour Inspectorate and Social Services (SLSSI), together with the State Health Inspectorate, is part of a task force responsible for monitoring the relevant protocols to reduce the transmission of infection among employees with a view to ensuring a safe and healthy working environment.

*Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Staffing and material means of the labour inspection services; scope of inspections carried out.* The Committee previously noted that the number of labour inspectors was not sufficient to perform fully the inspection tasks required by law and that the lack of financial resources limited the ability of inspectors to travel. The Committee notes with ***concern*** the Government's indication in its report that the number of employees of the SLSSI remains unchanged at 155, with 37 at the central level and 118 at the regional level. It also notes the Government's indication that the total budget of the SLSSI for 2020 amounts to 186,300,000 Albanian lek (ALL) (approximately US$1,781,000) of which ALL120,278,000 (approximately US$1,150,000) is the salary fund, ALL20,086,000 (approximately US$192,000) is the Social Insurance Fund and the rest are investments and operating expenses. Six vehicles are available, of which three are used by the Central Directorate. Only three out of 12 regional branches have a vehicle at their disposal. Moreover, the Government indicates that there are 46 tablets and 55 laptops available for inspectors. ***The Committee urges the Government to take the necessary measures to ensure that the budget allocated to labour inspection is sufficient to secure the effective discharge of the duties of the inspectorate, including the provision of suitably equipped offices and necessary transport facilities. The Committee also once again requests the Government to provide specific information on the staffing and material means of the SLSSI in performing inspections in agriculture, including transportation and local offices.***

*Articles 12(1) and 16 of Convention No. 81 and Article 16(1) and 21 of Convention No. 129. Right of inspectors to free entry of workplaces and undertaking of inspections as often as is necessary to ensure the effective application of the relevant legal provisions.* The Committee previously noted that 10 per cent of inspections were unscheduled and/or emergency inspections, for which an authorizing officer shall issue an authorization within 24 hours.

The Committee notes the Government's information that 13,079 entities were inspected in 2019, of which 78 per cent were planned inspections. Among the 2,823 unscheduled inspections, 197 were due to occupational accidents, 600 were in response to complaints and 2,026 were carried out following indications of flagrant violations. During the first three months of 2020, a total of 2,524 entities were inspected, of which 90 per cent were planned inspections. Among the 239 unscheduled inspections, 38 were due to occupational accidents, 135 were in response to complaints and 66 were carried out following indications of flagrant violations.

The Committee also notes the Government's reference, regarding inspection procedures, to Law No. 10433 of 2011 on inspection and Law No. 9643 of 2006 on labour inspection. Section 13 of the Law on labour inspection provides that the labour inspector and controller are authorized to enter the working premises of any entity without prior notice. According to section 26 of the Law on inspection, inspections shall be carried out in the implementation of the inspection programme as a principle, and "off-programme" inspections may only be carried out in prescribed situations. Section 27 of the Law on inspection also provides that the administrative inspection procedure is initiated as a rule, upon the issuance of the authorization by the Chief Inspector or the chief inspector of the territorial branch. The inspection may only be initiated without authorization where a flagrant violation is found to be occurring or the occurrence of events, accidents or incidents that have affected or may affect life or health or the environment. The initiation of such an inspection shall be noted immediately in a special part of the inspection report, and the inspector is obliged to notify, without delay, the person responsible for the issuance of the authorization. Section 27 further provides that although the issuance of an authorization in violation of the relevant provisions shall not invalidate the decision of the inspection, it does constitute a disciplinary violation.

Referring to its 2006 General Survey, *Labour Inspection*, paragraphs 265 and 266, the Committee observes that, restrictions maintained on inspectors' free initiative in this regard, such as the requirement

for a formal authorization issued by a higher authority, can only stand in the way of achieving the objectives of labour inspection as set out in the instruments. ***The Committee requests the Government to take the necessary legislative measures to ensure that labour inspectors are empowered to make visits to workplaces liable to inspection without previous notice in conformity with Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129, and that they are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions, in conformity with Article 16 of Convention No. 81 and Article 21 of Convention No. 129. The Committee requests the Government to provide information on the measures taken in this regard and to continue to provide information on the undertaking of inspections in practice, indicating the number of scheduled and unscheduled inspections, as well as the total number of workplaces liable to inspection. Lastly, the Committee requests the Government to provide information on any disciplinary measures imposed on labour inspectors related to the procedures for the authorization of inspection under the Law on inspection.***

*Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Conditions of service.* The Committee notes the Government's indication, in response to the Committee's previous comments on the remuneration scale and career prospects of labour inspectors, that the transfer and promotion of labour inspectors, as civil servants, is subject to Law No. 152 of 2013 on the Civil Service, as well as Decision of the Council of Ministers (DCM) No. 243 of 2015 on admission, movement, probationary period and appointment in the executive category and DCM No. 242 of 2015 on filling vacancies in the lower and middle management category. Regarding the current levels of remuneration, the Government provides information on the current salary categories of labour inspectors, and indicates that field inspectors receive a basic salary of ALL38,000, with a supplemental salary related to educational level and seniority. The Government also indicates that it is unable to provide comparative information between labour inspectors and tax inspectors due to limited data. The Committee further notes the Government's indication that the issue of the payment of inspectors will be addressed in the framework of the salary and job classification reform in process. ***The Committee requests the Government to pursue its efforts to improve the conditions of service of labour inspectors within the framework of the current salary and job classification reform, and to provide information on any progress made or results achieved. It also requests the Government to strengthen its efforts to ensure the availability of comparative information on the actual remuneration scale of labour inspectors in relation to other comparable categories of government employees exercising similar functions, such as tax inspectors or police officers, and to provide this information, when available.***

*Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 22 and 24 of Convention No. 129. Prosecutions and penalties.* The Committee previously noted the Government's indication that the policy pursued by the SLSSI intended to reduce the number of fines in a rational way, and it requested the Government to provide statistical information regarding prosecutions and penalties.

The Committee notes the Government's indication, and the information in the Annual Reports on Inspection Activities for 2018 and 2019 (available on the Government's website), that 175 fines were imposed in 2018 and 160 fines in 2019 (compared with the 381 fines in 2011 previously noted by the Committee). Fines were collected with a total value of ALL26,138,600 (approximately US$249,900) and ALL559,268 (approximately US$5,340) in interest on arrears from fines. Moreover, in 2019, 53 inspections decisions were appealed to SLSSI, of which 45 were upheld. There were also 44 judicial processes related to the sanctions imposed on various entities, where the inspection decision was upheld in 23 cases (with an additional 18 cases still ongoing). The Committee also notes that, according to 2019 Annual Report on Inspection Activities, administrative measures (a warning, fine or a suspension of activities) were imposed following 27 per cent of the total inspections carried out. Moreover, a higher percentage of violations were detected during unscheduled inspections, including in 78.6 per cent of inspections undertaken following accidents, 64 per cent of inspections following indications of flagrant violations and 48 per cent of those following complaints. ***Noting with concern the significant decline in the number of fines imposed since 2011, the Committee requests the Government to provide information on the measures it is taking to ensure the application of adequate penalties for violations of the legal provisions enforceable by labour inspectors. The Committee requests the Government to provide information on the reasons for this decline, and to continue to provide detailed information on the number and nature of fines imposed, the outcomes of the judicial appeals of inspection decisions and the percentage of violations detected during unscheduled and scheduled inspections respectively.***

### Matters specifically relating to labour inspection in agriculture

*Articles 6(1)(a) and (b) and (3), and 19 of Convention No. 129. Labour inspection activities in agriculture.* The Committee previously noted that the number of inspections in the agricultural sector constituted 0.8 per cent of total inspections, and that nearly half of the workforce in Albania was employed in the agricultural sector.

The Committee notes the Government's indication that in 2019, 284 inspections were carried out in the agriculture, forestry and fishery sector (2.1 per cent of the total inspections carried out), covering 1,519

employees (0.5 per cent of the total number of employees in workplaces inspected). Nineteen administrative measures were imposed, including six suspensions of work (due to violations of legal provisions on employment), nine warnings and one fine. During the first three months of 2020, 67 inspections in agriculture, forestry and fishery (2.6 per cent of the total inspections carried out), covering 450 employees (0.8 per cent of employees in workplaces inspected). Ten administrative measures were imposed, including three suspensions of work, six warnings and one fine. The Government also indicates that there are no specific trainings targeting inspections in the agriculture sector, but the topics of trainings conducted in 2019 will have a direct impact on inspections in all economic sectors. ***Noting the continuing low percentage of the inspection visits carried out in agriculture, the Committee once again requests the Government to strengthen its efforts to ensure the enforcement of laws and regulations in agriculture, including with respect to occupational safety and health (OSH), and to continue to provide information on the number of inspections carried out in that sector. The Committee also requests the Government to provide information on measures undertaken or envisaged to ensure that training is provided to labour inspectors on agriculture-related subjects, and on any progress made in this respect.***

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



## Bangladesh

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)

The Committee takes note of the supplementary information provided by the Government on 15 September 2020 in response to a complaint pending under article 26 of the ILO Constitution. In light of the decision adopted by the Governing Body at its 338th Session (June 2020), the Committee proceeded with the examination of the application of the Convention on the basis of this supplementary information received from the Government (see *Articles 2, 4, 7, 10, 11, 12, 16* and *23* below*),* as well as on the basis of the information at its disposal in 2019.

The Committee notes that the above-mentioned complaint under article 26 of the ILO Constitution – alleging non-compliance by Bangladesh with this Convention, as well as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – is pending before the Governing Body. At its 340th Session (October–November 2020), the Governing Body, in view of the information communicated by the Government on the situation of freedom of association in the country and taking due note both of the Government's commitment to continue to further improve the overall situation and to address the outstanding issues before the supervisory bodies: (i) requested the Government to develop, with the support of the Office and of the secretariat of the Workers' and Employers' groups, and in full consultation with the social partners concerned, a time-bound road map of actions with tangible outcomes to address all the outstanding issues mentioned in the complaint submitted under article 26 to the 108th Session of the International Labour Conference (2019); (ii) requested the Government to report on progress made in that regard to the Governing Body at its next session; and (iii) deferred the decision on further action in respect of the complaint until its 341st Session (March 2021).

*Articles 2, 4, 12 and 23 of the Convention. Labour inspection in export processing zones (EPZs) and special economic zones (SEZs).* In its previous comments, the Committee requested that EPZs and SEZs be brought under the purview of the labour inspectorate.

The Committee notes the Government's reference in its report to the EPZ Labour Act, which was adopted in February 2019. It welcomes that Chapter XIV of that Act now provides for labour inspection by labour inspectors appointed under the Bangladesh Labour Act (BLA) and that the Government indicates that labour inspectors of the Directorate of Inspection for Factories and Establishments (DIFE) have already undertaken labour inspections in five factories in EPZs. The Committee also notes the Government's indications that consultations are ongoing with workers, investors and relevant stakeholders to see how labour inspections undertaken by the DIFE can best be integrated with the existing supervision exercised by the Bangladesh Export Processing Zones Authority (BEPZA). The Government states in the supplementary information provided that an inspection framework is being developed, which will be shared when completed. The Committee notes, in particular, that section 168 of the EPZ Labour Act allows the Chief Inspector and other Inspectors appointed under the BLA to undertake inspections but observes that an approval of the Executive Chairman of the BEPZA is required. In this respect, the Committee recalls that, pursuant to section 4(3) of the Bangladesh Export Processing Zones Authority Act, the objectives of the BEPZA include encouraging and promoting foreign investment in the zone. The Committee recalls that *Article 12* of the Convention provides that labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. ***While the Committee welcomes the progress made in opening EPZs and SEZs for labour inspections by the DIFE, it requests the Government to provide information on the outcome of the above-mentioned discussions and consultations, including the inspection framework under development. Further, the Committee requests the Government to take the***

***necessary measures to ensure that labour inspectors are empowered to enter freely and without previous notice establishments in EPZs and SEZs, without any restrictions. In this respect, the Committee requests the Government to provide information on the nature and the modalities of the approval required from the BEPZA for the undertaking of inspections, including if a separate request is required before each inspection, and if so, the number of requests made, the number approved, the time elapsed between each request and approval, and the reasons given for each failure to approve. Lastly, it requests the Government to provide statistical information on the labour inspections undertaken in EPZs and SEZs, disaggregated into inspections by the DIFE and inspections under the BEPZA, including the overall number of inspections undertaken, the violations detected and the measures taken as a result.***

*Article 6. Status and conditions of service of labour inspectors.* In its previous comments, the Committee noted that retention of labour inspectors was a problem and that a number of recently recruited labour inspectors had left the DIFE after having been trained, to take up work with other government services. The Committee noted that a study on the reasons for the high attrition rate of the DIFE recommended, among other things, the creation of more senior positions and the further development of staff competencies. In this respect, the Committee notes the Government's indication that following the recommendations in that study, a new proposal providing for the recruitment of a significant number of labour inspectors was made, including the creation of senior positions. The Committee notes that the amendments to the BLA, adopted in November 2018, provide for the creation of an additional labour inspection position, bringing the number of career positions with the labour inspectorate to six (previously five). ***The Committee requests the Government to continue to provide information on the measures taken to implement the recommendations in the study on the reasons for the high attrition rate, and to provide information on the implementation of the new career structure adopted in 2018, including the number of appointments made at each position, as well as information on the attrition rate among inspectors at different professional levels.***

*Articles 7, 10, 11 and 16. Human resources and material resources of the labour inspectorate. Frequency and thoroughness of labour inspections.* In its past comments, the Committee noted that 575 labour inspection positions had been approved in 2014 but not filled, and that the number of labour inspectors decreased from 345 to 320 between 2017 and 2018.

The Committee notes with ***concern***, from the statistics provided by the Government responding to the Committee's request that the number of labour inspectors further decreased to 308 labour inspectors by August 2019. However, it also notes the Government's supplementary information that as of 2020, the DIFE has been upgraded with an additional 993 manpower. The Committee also notes the information provided, on the number of labour inspections carried out, the training provided to labour inspectors, and that the Government reiterates the information from July 2017 with respect to the equipment and transport facilities available to the DIFE. Finally, it welcomes the information concerning the increase in the budget of the DIFE from 351.20 million Bangladesh taka to 418.5 million taka.

The Committee notes that in the supplementary information provided, the Government once again refers to proposals to increase the manpower of the DIFE, indicating that it has been proposed to create an additional 1,698 positions, including senior positions. ***Welcoming the proposed increase in the number of labour inspectors, the Committee requests the Government to continue to make every effort to recruit an adequate number of qualified labour inspectors, including by taking measures to fill all of the 575 labour inspection posts already approved in 2014, and to continue to provide information on the proposal to further increase the number of labour inspectors. In this respect, it requests the Government to clarify whether the additional 993 positions referred to by the Government have been filled or only approved. It requests the Government to strengthen its efforts to ensure that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, and to provide information on the current number of labour inspectors working at the DIFE (not only on the number of positions approved or proposed), as well as on the number of labour inspection visits carried out, and to disaggregate this information by sector. Noting the information provided by the Government in this respect, the Committee also requests the Government to provide up-to-date information on the budget, equipment and transport facilities available to the DIFE, and the training provided to labour inspectors.***

*Articles 12(1), 15(c) and 16. Inspections without previous notice.* Duty of confidentiality in relation to complaints. In its previous comments, the Committee noted an increase in the number of inspections that were unannounced (random or complaints-driven), from 2.5 per cent of all inspections in 2014 to 20 per cent in 2016–17, compared with those undertaken with prior notice (regular inspections).

The Committee notes the indication of the Government that the BLA permits labour inspectors to deal with complaints confidentially. The Committee also notes with ***concern*** that the Government indicates that inspections in factories are normally announced, while inspections in shops and establishments are normally unannounced, and it notes the information provided concerning the number of inspections in each. The Committee recalls the importance of undertaking a sufficient number of inspections that are unannounced, including at factories as well as shops and establishments, to ensure that when inspections

are conducted as a result of a complaint without prior notice, the fact of the complaint is kept confidential. ***The Committee requests the Government to provide further information on the specific measures taken or envisaged to ensure that labour inspectors treat as absolutely confidential the source of any complaint and give no intimation to the employer that an inspection visit was made in consequence of the receipt of such a complaint, including measures taken with respect to inspections of factories. It also requests the Government to provide more specific information on the number of inspection visits that were unannounced and those that were undertaken with prior notice, disaggregated by RMG factory, shop, establishment, and other factories, as well as statistical information on the outcome of those visits disaggregated in the same manner.***

*Articles 17 and 18. Legal proceedings, effective enforcement and sufficiently dissuasive penalties.* The Committee notes the information provided by the Government, in reply to the Committee's request for statistics on enforcement in relation to violations of the legal provisions. In 2018, 42,866 labour inspections were undertaken and 116,618 violations detected (compared with 40,386 inspections and 100,336 violations in 2017), 1,531 cases submitted to the labour courts (1,583 in 2017) and 798 resolved cases (574 in 2017). The Committee notes that the outcome of cases referred to the courts were limited to the imposition of fines, and that the amount of penalties imposed in 2018 was 3.55 million taka (approximately US$41,268, an average of approximately US$52 per resolution). The Committee also notes that the Government reiterates that there is one legal officer at the DIFE responsible for the follow-up of labour law violations detected by labour inspectors, that a legal advisory firm is affiliated with the DIFE, and that there is a plan to establish a legal unit at the DIFE. The Government indicates that this unit is proposed to be composed of 17 legal officers. The Committee notes with ***regret*** that the Government does not provide a reply in response to the Committee's request for information on any measures taken or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive, including penalties other than fines. ***The Committee, once again, requests the Government to provide information on any measures introduced or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive and to improve the proceedings for the effective enforcement of the legal provisions. In this respect, it also requests the Government to provide information on the progress made to establish a legal unit at the DIFE, including on the number of staff and their functions. Lastly, it requests the Government to continue to provide information on the specific outcome of the cases referred to the labour courts (such as the imposition of fines and also sentences of imprisonment) and to specify the legal provisions to which they relate.***

The Committee previously noted that labour officials of the Department of Labour (DOL) address cases of alleged violations of freedom of association through conciliation and requested information on the measures taken to secure the enforcement of legal provisions related to freedom of association. In this respect, the Committee notes the Governments' indication that pursuant to the BLA, the DOL does not intervene in the conciliation concerning violations of freedom of association. The Committee takes due note of this information and refers to its comments under Conventions Nos 87 and 98.

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

***[The Government is asked to reply in full to the present comments in 2021.]***

## Congo

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1999)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Absence of practical information to enable the Committee to assess the operation of the labour inspectorate in relation to the provisions of the Convention and relevant national laws.* The Committee notes the updated information regarding the number and geographical distribution by category of labour inspection staff. It notes, by comparison with the data given in the report received from the Government in 2008, a substantial reduction in labour inspection staff, in particular labour inspectors (from 75 to 55) and principal controllers (from 96 to 72). The Committee recalls that, according to *Article 10*, in order to secure the effective discharge of the duties of the labour inspectorate, the number of labour inspectors must be determined with due regard to the importance of the duties which inspectors have to perform, in particular the number, nature, size and situation of the workplaces liable to inspection; the number and classes of workers employed in such workplaces; the number and complexity of the legal provisions to be enforced; the material means placed at the disposal of the inspectors; and the practical conditions under which visits of inspection must be carried out.

While the laws and regulations concerning labour inspection and its mandate and prerogatives are available, it must be noted that there are no numerical data on other areas defined in *Article 10* and, as the Government admits, there are no specific measures for giving effect to the provisions of *Article 11* concerning the material conditions of work of labour inspectors, who do not have access to the transport facilities required for them to carry out their duties. The Committee notes, on the other hand, that according to the Government,

inspectors' travel and related costs are reimbursed by the competent authority on presentation of invoices, which was not always the case, according to the report received in 2008.

***The Committee once again requests the Government to provide in its next report all the available information needed to assess the application of the Convention in law and in practice. This information should cover, among other matters: (i) the up-to-date geographical distribution of public officials responsible for labour inspection as defined in Article 3(1) of the Convention; (ii) the geographical distribution of workplaces liable to inspection or, at the least, those for which the Government considers that the conditions of work require specific protection from the labour inspection services; (iii) the frequency, content and number of participants at the training courses provided for labour inspectors during their career; (iv) the level of remuneration and conditions for career advancement in relation to other public officials with comparable responsibilities; (v) the proportion of the national budget allocated to the public labour inspection services; (vi) a description of the cases in which inspectors visit enterprises, the procedure followed and the transport facilities that they use for this purpose, the activities that they carry out and their outcome; and (vii) the proportion of supervisory activities carried out by inspectors in relation to their conciliation duties.***

***The Committee also requests the Government to communicate a copy of any inspection activity reports originating from regional directorates, including the reports cited in the Government's reports sent to the ILO in 2008 and 2011; a copy of the draft or final text of the regulations relating to the status and conditions of service of labour inspectors; copies of the proposed amendments to the Labour Code, and of the memorandum which was reportedly sent to the ILO and is intended to improve the functioning of the labour inspection service.***

***In order to establish a labour inspection system that will respond to the social and economic goals which are the object of the Convention, the Committee urges the Government to make every effort to adopt the measures needed to implement the measures described in the Committee's general observations made in 2007 (concerning the need for effective cooperation between the labour inspection service and the judicial system), in 2009 (concerning the need for statistics on industrial and commercial workplaces subject to labour inspection and the number of workers covered, and 2010 (concerning publication of the content of an annual report on the functioning of the labour inspection system). The Committee recalls once again the possibility of obtaining technical assistance from the ILO and of requesting, within the context of international financial cooperation, financial assistance in order to give the necessary impetus to the establishment and operation of the labour inspection system, and would be grateful for any information on progress made and difficulties encountered.***

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

## Dominica

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Articles 3, 6, 7, 10 and 16 of the Convention. Numbers, conditions of service and functions of labour inspection staff. Number of labour inspection visits.* The Committee notes from the Government's report that the Labour Department cannot increase its staff and that inspectors operate in all areas of labour administration. The Government also declares that every attempt is made to ensure that inspectors are professional in their conduct. ***The Committee requests once again the Government to indicate the criteria and process for the recruitment of labour inspectors, and to specify the training activities provided to them upon their entry into service and in the course of employment. Please also indicate how it is ensured that the conditions of remuneration and career development of labour inspectors reflect the importance and specificities of their duties, and take into account personal merit.***

***The Committee asks the Government to provide information on the time and resources spent on mediation/conciliation of industrial disputes in relation to their primary duties of inspection established under this Convention. It asks the Government to take the necessary measures to ensure that, in accordance with Article 3(2), any duties which may be entrusted to labour inspectors in addition to their primary functions shall not be such as to interfere with the effective discharge of the latter. It also asks the Government to provide information on the measures taken to ensure that all workplaces are inspected as often and as thoroughly as necessary in line with Article 16 of the Convention.***

*Article 15. Duty of confidentiality.* Referring to the Committee's previous comments on this issue, the Committee notes from the Government's report that there has not been any change in legislation to give effect to this Article of the Convention and that the issue is to be addressed by the Industrial Relations Advisory Committee. The Government also reports that the department and labour inspectorate have always maintained strict confidentiality. ***The Committee once again requests the Government to take steps to ensure that the legislation is supplemented so as to give full effect to Article 15 of the Convention and to keep the Office informed of all progress in this respect and to send copies of any relevant draft or final texts.***

*Articles 5(a), 17, 18, 20 and 21. Cooperation with the justice system and enforcement of adequate penalties. Publication and content of an annual report.* The Committee notes from the Government's report that steps will be taken to improve the quality of the annual report on inspection services. ***The Committee hopes that the Government will make every effort to ensure that an annual report on the work of the labour inspection services is elaborated and published and that it contains information on all the items listed in Article 21 of the Convention, notably, statistics of inspection visits, violations and penalties imposed as well as industrial accidents and cases of occupational disease.*** The Committee draws the Government's attention in this regard to the guidance provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), as to the type of information that should be included in the annual labour inspection reports.

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

## Grenada

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Articles 20 and 21 of the Convention. Establishment, publication and communication to the ILO of annual inspection reports.* In its previous comments, the Committee noted that despite its reiterated comments on this subject, no annual labour inspection reports had been communicated to the ILO since 1995. It notes that the Government underlines the importance of establishing, publishing and transmitting annual labour inspection reports, but that it indicates that the annual reports as currently prepared do not contain all of the subjects as required under *Article 21*. ***The Committee urges the Government to indicate the measures adopted or envisaged to ensure that annual inspection reports are published and transmitted to the ILO in accordance with the requirements of Articles 20 and 21. The Committee reminds the Government, once again, that it may avail itself of technical assistance for this purpose.***

***The Committee requests the Government in any event to provide statistical information that is as detailed as possible on the activities of the labour inspection services (industrial and commercial workplaces liable to inspection, number of inspections, infringements detected and the legal provisions to which they relate, penalties applied, number of industrial accidents and cases of occupational disease, etc.) to enable the Committee to make an informed assessment on the application of the Convention in practice.***

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

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

## Haiti

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 1 September 2019, in which it reiterated its observations of 2016, 2017 and 2018 and adds that the situation has deteriorated.

*Articles 3, 12, 13, 15, 16, 17 and 18 of the Convention. Discharge of primary duties of the labour inspectorate. Appropriate sanctions.* In its previous comment, the Committee noted the Government's indications concerning the obstacles faced in applying the Convention in practice, particularly the inadequate numbers of labour inspectors, and requested the Government to supply detailed information together with statistics on the planning and implementation of systematic inspections throughout the country, including in the export processing zones, and also their results. The Committee notes the information provided by the Government concerning the planning and implementation of inspection visits in two of the ten departments in the country in several activity sectors, including: (i) in the western department: 64 inspections (32 initial inspections and 32 catch-up inspections) conducted in 2017; 16 inspections (11 of which in the textile industry), 31 unannounced inspection visits in enterprises and 24 investigations, conducted in 2018; and 42 visits planned and ten advice services carried out in 2019; and (ii) in the north-eastern department, ten initial inspections and ten follow-up inspections were conducted in 2018. The Government indicates that the main objective of labour inspection over this period has been redressing the inconformity identified, rather than imposing penalties. The Committee also notes that the CTSP in its observations indicates that inspectors do not provide technical advice to workers and employers, but limit themselves to calculating the statutory benefits due in disputes between employers and workers. The CTSP also indicates that there are no statistics on labour inspection in the country; to its knowledge, there is no planning or implementation of systematic inspections throughout the country; and, in practice, labour inspection was carried out only in the textile industry. ***While duly noting the progress achieved since 2017 by the labour inspectorate in the country, particularly concerning the planning and implementation of visits in two of the ten departments in the country, the Committee requests the Government to strengthen its efforts to progressively expand the planning and conducting of inspection visits to all regions and all economic sectors of the country. The Committee also requests the Government to continue to provide information on the measures taken in this regard, including the statistics concerning the number of inspections planned and conducted, disaggregated by sector, along with details of the results of these visits, including the warnings issues, legal procedures brought or recommended, and penalties imposed and applied. The Committee also requests the Government to ensure that, during their inspection visits, the inspectors perform their primary functions in conformity with Article 3 of the Convention.***

*Articles 6, 10 and 11. Human and material resources available to the labour inspectorate.* The Committee notes the Government's indication in reply to its previous comments that: (i) between 2014 and 2017, thanks the project to build the capacities of the Ministry of Social Affairs and Labour (ILO/MAST), piloted by the ILO, a team was established of 20 officials, 12 of whom are inspectors in the field and eight are trainers; (ii) in 2018, means of transport (six motorcycles and a car) were provided to certain regional MAST offices and that efforts are envisaged to equip all inspection services with the means necessary to guarantee labour inspection in workplaces; and (iii) it planned to upwardly revise the salaries of labour inspectors in the same way as all other inspectors of the public administration. The Committee notes the CTSP's observations, according to which the Government has not made an effort to change the status of labour inspectors in order to provide them with better employment conditions, such as a decent salary, a guarantee of productive employment and social advantages, which could jeopardize the independence of inspectors. ***The Committee requests the Government to pursue its efforts towards progressively increasing the number of inspectors and the material means placed at their disposal to enable them to effectively discharge the functions of the inspection services. The Committee also requests the Government to take the necessary measures to improve the conditions of service of the inspectors, including increasing their remuneration. In this regard, it requests the Government to provide information on the salary scales and labour inspectors' career prospects, compared with public servants who carry out similar functions within other government services, such as tax inspectors and the police.***

*Articles 6, 7(1) and Article 15(a). Recruitment of inspectors. Prohibition from having any direct or indirect interest in the undertakings.* In its previous comment, the Committee noted that, in its observations, the CTSP indicated that recruitment of labour inspectors was carried out on the basis of clientelism. The Committee notes the Government's indication that, to ensure full application of sections 47 to 75 of the Decree of 17 May 2005, revising the general public service regulations, which regulate the recruitment procedure of public service agents, including labour inspectors, an administrative structure has been established for this purpose, entitled the Office for Human Resources Management (OMRH). The Committee also notes that the CTSP reiterated in 2019 its previous observations on this matter and indicated the further deterioration of the labour inspectorate's independence vis-à-vis employers. ***The Committee requests the Government to ensure that labour inspectors are recruited with sole regard to their qualifications for the performance of their duties and that their status and conditions of service are such that they are independent of changes of government and of improper external influences in conformity with Articles 6 and 7(1) of the Convention. The Committee also requests the Government to provide information on the composition of the OMRH as well as on its prerogatives.***

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

## India

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 16 September 2020. The ITUC states that, as part of the response to the COVID-19 pandemic, a number of states (including Uttar Pradesh, Madhya Pradesh, Rajasthan and Gujarat) have made changes to their labour laws by way of amendments, ordinances or executive orders, bypassing tripartite consultations and parliamentary debates. The ITUC states that the changes, based on the extraordinary measures provisions of the Factories Act 1948, gravely undermine workers' rights and leave them without protection, in particular with regard to working hours, safety and health and wages. The ITUC also expresses concern about the provisions adopted in the state of Madhya Pradesh that exempt "non-hazardous factories" from routine inspections by the Labour Commissioner, and permit these factories to submit third-party certification regarding compliance instead. The ITUC states that this exemption is a violation of the Convention and will endanger the health and safety of workers. ***The Committee requests the Government to provide its observations in this respect.***

In addition, the Committee notes that the Occupational Safety and Health (OSH) and Working Conditions Bill, previously noted by the Committee, was adopted in September 2020. The Committee proceeded with the examination of the application of the Convention on the basis of the new legislation adopted (see *Articles 12* and *17* below), as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations made by the Council of Indian Employers (CIE), received on 30 August 2019, and the observations made by the International Trade Union Confederation (ITUC), received on 1 September 2019, as well as the Government's reply in relation to the observations made by the ITUC.

#### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)*

The Committee notes the discussion in the Conference Committee on the Application of Standards (CAS) of the International Labour Conference, at its 108th Session (June 2019), on the application of the

Convention, and the conclusions adopted. The conclusions of the CAS called upon the Government to: (i) ensure that the draft legislation, in particular the Code on Wages, and the OSH and Working Conditions Act, is in compliance with the Convention; (ii) ensure that effective labour inspections are conducted in all workplaces, including the informal economy and in all Special Economic Zones (SEZs); (iii) promote collaboration between officials of the labour inspectorate and employers and workers, or their organizations, in particular when it comes to the implementation of inspection reports; (iv) increase the resources at the disposal of the central and state government inspectorates; (v) ensure that labour inspectors have full powers to undertake routine and unannounced visits and to initiate legal proceedings; (vi) pursue its efforts towards the establishment of registers of workplaces at the central and state levels; (vii) provide detailed information on the progress made with respect to measures taken to improve the data collection system, enabling the registration of data in all sectors; (viii) ensure that the operation of the self-certification scheme does not impede or interfere with the powers in functions of labour inspectors to carry out regular and unannounced visits in any way, as this is only a complementary tool; (ix) submit its annual report on labour inspection to the ILO; and (x) provide information on the number of routine and unannounced visits, as well as on the dissuasive sanctions imposed against infractions to guarantee the enforcement of labour protections in practice. The CAS also invited the Government to accept a direct contacts mission and to elaborate a report in consultation with the most representative employers' and workers' organizations on progress made in the implementation of the Convention in law and practice. The Committee notes with ***concern*** the statement in the Government's report that it does not accept any direct contacts mission.

*Articles 2 and 4 of the Convention. Labour inspection in SEZs.* In its previous comments, the Committee noted the Government's earlier indication that few inspections had been carried out in SEZs, and that Development Commissioners continued to exercise inspection powers in some SEZs. The Committee notes the observations of the ITUC expressing concern that the power of labour inspectors are being exercised by Development Commissioners who have a responsibility to promote investment in SEZs. The Committee also notes the observations made by the CIE that some of the SEZs have jurisdictions in more than one state, and that due to this administrative difficulty, Development Commissioners have been appointed to oversee the functioning of the SEZs. The CIE adds that Development Commissioners have been given full powers to enforce the labour laws through labour inspectors deputed by the local governments.

The Committee notes the Government's indication, in response to the concerns expressed by the ITUC, that the deputed labour inspectors from the states work independently, are paid by the states and may conduct inspections on their proper initiative without prior intimation to the Development Commissioners. The Committee further notes the Government's indications, in reply to the Committee's request to ensure that effective labour inspections are conducted in all SEZs, that the number of inspections has increased substantially in the last three years. In this respect, the Committee notes with ***interest*** from the statistical information provided by the Government, an increase in the number of inspections undertaken in six of the seven SEZs from 2016–17 to 2018–19: from 0 to 62 in Falta Kolkata; from 26 to 30 in Vishakapatnam; from 46 to 105 in Mumbai; from 16 to 30 in Noida; from 368 to 2,806 in Kandla; and from 189 to 222 in Chennai. The number of inspections undertaken in the SEZ Cochin went from 22 to 18 over the same period. The Committee notes however, that the number of penalties imposed remained low, and in three out of the seven SEZs, no penalties were imposed during this period. ***The Committee requests the Government, in line with the 2019 conclusions of the CAS, to ensure that effective labour inspections are conducted in all SEZs. Welcoming the information already provided, the Committee requests the Government to provide more detailed statistical information on the number of labour inspectors responsible for inspections in these zones, the number of inspection visits, the number and nature of offences reported, the number of penalties imposed, the amounts of fines imposed and collected, and information on criminal prosecutions, if any. It also requests the Government to continue to provide information on the number of enterprises and workers in each SEZ. The Committee further requests the Government to provide up-to-date information indicating in which SEZs labour inspection powers have been delegated to Development Commissioners, including the specific powers so delegated and how inspections are carried out in those SEZs.***

*Articles 4, 20 and 21. Availability of statistical information on the activities of the labour inspection services at the central and state levels. Availability of statistics in specific sectors.* The Committee notes the Government's reference, in reply to the Committee's previous request for an annual labour inspection report, to the 2018–19 report published by the Ministry of Labour and Employment, which contains statistical information on inspection activities at the central level (including the number of labour inspections, the number of irregularities detected, the number of prosecutions and convictions, as well as the number of accidents in mines). Concerning the state level, the Committee notes the statistical information on labour inspection activities provided by the Government with its report (including on the number of labour inspections in 14 states, and the number of violations detected, prosecutions and penalties imposed in 15 states). Finally, the Committee welcomes the information available on the Shram Suvidha web portal at the Ministry of Labour and Employment concerning the information on registered

workplaces in nine states and the information that discussions are ongoing with other states concerning the integration of information into the portal. The Committee also notes the observations made by the ITUC that the statistical data provided does not allow for an assessment of the effective operation of the labour inspection services. ***The Committee urges the Government to pursue its efforts to ensure that the central authority (at the central level or the state levels), publishes and transmits to the ILO annual reports on labour inspection activities containing all the information required by Article 21. In line with the 2019 conclusions of the CAS, the Committee encourages the Government to pursue its efforts towards the establishment of registers of workplaces at the central and state levels. In this regard, the Committee also once again requests the Government to provide detailed information on the progress made with respect to measures taken to improve the data collection system enabling the registration of data in all sectors.***

*Articles 10 and 11. Material means and human resources at the central and state levels.* The Committee notes with ***interest*** the Government's indication, in response to the Committee's request to increase the resources at the central and state government inspectorates, that more than 574 labour inspectors have been recruited at the state levels in the last two years, bringing the total number of labour inspectors to 3,721. The Government adds that at the central level, the number of labour inspectors is 4,702. The Committee also notes the information provided by the Government in relation to the central level and 19 states on the transport facilities or transport allowance provided, as well as on the available material resources.

The Committee notes the statement of the CIE that the use of technology, information and communications technology in particular, has contributed to promoting compliance. The Committee also notes the observations made by the ITUC that the human and material resources of the labour inspectorate are inadequate. It notes the Government's reply that inspectors at the central government level and in most states are provided vehicles for conducting inspections. ***In line with the 2019 conclusions of the CAS, the Committee requests the Government to continue to take measures to increase the resources at the disposal of the central and state government inspectorates, and to provide information on the concrete measures taken in that respect. It also requests the Government to continue to provide information on the number of labour inspectors, material resources and transport facilities and/or budget for travel allowances of the labour inspection services at the central level and for each state, and to provide statistical information on the workplaces liable to inspection at the central level and state levels.***

*Articles 12 and 17. Free initiative of labour inspectors to enter workplaces without prior notice, and discretion to initiate legal proceedings without previous warning.* The Committee previously requested the Government to ensure that, in the ongoing legislative reform, any legislation developed be in conformity with the Convention. The Committee notes the Government's indication, in response to this request, that the Code on Wages was adopted in August 2019. The Committee notes that pursuant to section 51(5)(b) of the Code on Wages, labour inspectors entitled "inspectors-cum-facilitators" may inspect establishments "subject to the instructions or guidelines issued by the appropriate Government from time to time". It further notes that the Code on Wages provides that inspectors-cum-facilitators shall, before the initiation of prosecution for an offence, give employers an opportunity to comply with the provisions of the Code within a certain time limit through a written direction (section 54(3)).

In addition, the Committee notes the adoption of the OSH and Working Conditions Code on 28 September 2020. The Code provides that, subject to rules made, inspector-cum-facilitators may enter any place which is used, or they have reason to believe is used, as a work place and inspect and examine the establishment and any premises, plant, machinery, article, or any other relevant material (section 35(1) and (2)). The Committee notes that while the Code also gives inspectors-cum-facilitators and other appropriately authorized officers the power to enter workplaces at any time during normal working hours or at any other time deemed necessary, it requires them to give notice in writing to the employer prior to undertaking a survey (section 20(1)); and with respect to inspections in mines (section 41), to provide at least three days before conducting inspections (for the purpose of surveying, levelling or measuring any mine or any output therefrom), except in emergency situations pursuant to a written order from the Chief Inspector-cum-Facilitator. The Committee further notes that section 110 provides that an inspector-cum-facilitator shall not initiate prosecution proceedings against an employer for any offence in Chapter XII of the Code (on offences and penalties), and shall give an opportunity to comply with relevant provisions of the Code within a period of thirty days from the date of notice giving opportunity, and, if the employer complies with such provisions within the period, no such proceeding shall be initiated against the employer. Section 110 further provides that the period of notice does not apply in the case of an accident or if it concerns a violation of the same nature repeated within a period of three years from the date on which the first violation was committed. In addition, the Committee notes the statistics provided by the Government concerning the number of convictions and penalties imposed at the central level and for 11 states for the period of 2016–19.

The Committee recalls that under *Article 12(1)(a)* of the Convention, labour inspectors shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, and it further recalls *Article 17* of the Convention provides that, with certain exceptions, persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it must be left to the discretion of labour inspectors to give a warning or advice instead of instituting or recommending proceedings. ***The Committee requests the Government to take measures to ensure that labour inspectors are empowered, in law and practice and in line with Article 12(1)(a) and (b) of the Convention, to make visits without previous notice. In this respect, noting that the Code on Wages provides for inspections subject to the instructions or guidelines issued by the appropriate Government, the Committee urges the Government to ensure that the instructions issued fully empower labour inspectors in accordance with Article 12(1)(a) and (b) of the Convention. The Committee also requests the Government to provide further information on the meaning of the term "survey" in section 20 of the OSH and Working Conditions Code, and to indicate whether labour inspectors are required to provide notice of all inspections in writing under the Code. It also urges the Government to take the necessary measures to ensure that labour inspectors are able to initiate legal proceedings without previous warning, where required, in conformity with Article 17 of the Convention. In this respect, it requests the Government to provide further information on the meaning of the term "inspectors-cum-facilitators," including the functions and powers of officials performing this role. Noting the statistics already provided, the Committee requests the Government to provide information on the number and nature of offences reported, the number of penalties imposed, the amounts of fines imposed and collected, and information on criminal prosecutions, if any.***

The Committee is raising other matters in a request addressed directly to the Government which reiterates the content of its previous request adopted in 2019.

## Kyrgyzstan

### Labour Inspection Convention, 1947 (No. 81) (ratification: 2000)

The Committee notes the observations made by the Kyrgyzstan Federation of Trade Unions (KFTU) received on 30 September 2020.

*Articles 12, 16, 17 and 18 of the Convention. Limitations and restrictions of labour inspection. Effective enforcement of penalties for labour law provisions.* 1. *Moratorium on labour* inspections. The Committee notes the Government's indication in its report regarding the adoption of Government Decision No. 586 of 2018 on the introduction of a temporary ban on the inspection of economic entities. The Committee notes with ***deep concern*** that Government Decision No. 586 provides for such a temporary ban between 1 January 2019 and 1 January 2021 (section 1). The Government Decision states, in its preamble, that it aims to: create favourable conditions for business development, improve the investment climate, support the economic activities of business entities and prevent interference of authorized bodies in the activities of business entities. However, the Committee notes the KFTU's statement that since inspections have been prohibited, any violation of workers' labour rights can only be investigated on the basis of a worker's complaint, which creates favourable conditions for employers to cover up any violation of labour rights and industrial accidents. The KFTU further states that the moratorium has had a negative impact on occupational safety and the prevention of occupational accidents.

While noting that inspections may be carried out in connection with applications from individuals and legal entities concerning violations of labour rights (section 1(4)), the Committee recalls that *Article 16* of the Convention provides for the undertaking of labour inspections as often as is necessary to ensure the effective application of the relevant legal provisions. ***Recalling that a moratorium placed on labour inspection is a serious violation of the Convention, the Committee urges the Government to eliminate the temporary ban on inspections and to ensure that labour inspectors are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions, in compliance with Article 16 of the Convention. The Committee also requests the Government to provide its comments with respect to the KFTU observations.***

2. *Other limitations on labour inspection.* The Committee previously noted with concern that Law No. 72 of 2007 (as amended) on the conduct of inspections in enterprises provides for various limitations on labour inspection powers and the undertaking of labour inspections, including restrictions relating to: (i) the power to undertake labour inspections without prior notice (scheduled inspection visits have to be notified at least ten days prior to the inspection (section 6(6)); (ii) the free initiative of labour inspectors (labour inspections require a formal authorization, in coordination with the body for the development of entrepreneurship (section 12(3)); (iii) the frequency of labour inspections (e.g. scheduled inspections shall not be conducted more than once a year in workplaces considered to be at high risk, and not more than once every three years in workplaces with an average degree of risk (section 6(3)), and inspections shall not be conducted in new businesses within the first three years of their operation (section 6(8)); and (iv) the scope of inspections, particularly in terms of the issues that can be examined in the course of

inspections (sections 6(5) and 7(4)). Pursuant to section 20 of Law No. 72 where a court does not confirm the existence of a violation as detected by an inspector, and where the court considers that this is the result of a fault of the labour inspector, the inspector shall be removed from office. Section 11 of Law No. 72 provides that scheduled and unscheduled inspections are not intended to impose financial or other sanctions on businesses and that in the event of an observed violation of the legislation during a scheduled inspection, inspectors may issue a written warning to the enterprise requesting it to eliminate the violation within 30 days (three days if the violation impacts the safety or health), and following the expiry of this delay, may take measures to influence the enterprise, as provided for in legislation.

The Committee notes that the Government indicates that there have been no amendments to these provisions of Law No. 72 and that it plans to consider the issue within the framework of the National Tripartite Commission. The Government states that in accordance with Law No. 72, the authorized state body may carry out unplanned on-site inspections only after the Ministry of Economy has given its consent. The Committee notes with ***deep concern*** the Government's statement that this is the only form of inspection during which labour inspectors can check that employers comply with the requirements of labour legislation, and its further statement that if the organization has a qualified lawyer, any inspection with prior notice or limited to the study of documents provided by the employer has almost no chance of identifying evidence of actual labour law violations. The Committee also notes the observations of the KFTU referring to the number of occupational accidents and indicating that Law No. 72 has had a negative impact on occupational safety and the prevention of occupational accidents.

The Committee recalls its general observation of 2019 on the labour inspection Conventions, expressing concern at reforms that substantially undermine the inherent functioning of labour inspection systems and urging governments to remove these restrictions, with a view to achieving conformity with Convention No. 81. ***The Committee once again urges the Government to take the necessary measures to ensure that labour inspectors are empowered to make visits to workplaces liable to inspection without previous notice in conformity with Article 12(1)(a) of the Convention and that they are able to initiate or recommend immediate legal proceedings without prior warning, where required, in conformity with Article 17 of the Convention. It further urges the Government to take the necessary measures to ensure that labour inspectors are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions. The Committee also requests the Government to provide information on the progress made in this regard, including the consideration given to this issue within the National Tripartite Commission. It recalls that the Government can avail itself of the technical assistance of the ILO in this regard.***

*Article 13(2)(b). Measures to ensure the safety and health of workers.* In its previous comments, the Committee referred to section 17 of the Occupational Safety and Health Act and section 402 of the Labour Code and requested the Government to bring the national legislation into compliance with the requirements of the Convention by empowering labour inspectors to take measures with immediate executory force in case of imminent danger to the health or safety of workers, even where no specific violation of the legislation is identified. The Committee notes that the Government indicates that it plans to consider the issue within the framework of the National Tripartite Commission. ***The Committee once again requests the Government to take measures to bring the national legislation into conformity with Article 13(2)(b) of the Convention and to provide information on the measures taken.***

*Articles 20 and 21. Annual labour inspection report.* In its previous comments, the Committee requested the Government to provide information on the measures taken by the central labour inspection with a view to publishing and transmitting to the Office the annual labour inspection report. In this respect, the Committee notes the statistical data on labour inspection visits and violations detected provided in the Government's report in 2019, but notes that the Government has not submitted an annual report on the work of the labour inspection activities. ***The Committee urges the Government to take the necessary measures to ensure that annual inspection reports are published and transmitted to the ILO in accordance with the requirements of Articles 20 and 21.***

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

***[The Government is asked to reply in full to the present comments in 2021.]***

## Lebanon

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Labour law reform.* The Committee notes the information provided by the ILO Decent Work Technical Support Team and the Regional Office for Arab States that a tripartite meeting took place in 2019 with the support of the ILO and that a new labour law reform is under way. ***The Committee requests the Government***

***to take into account the matters raised below and in a request addressed directly to the Government in the context of this new reform process, in order to ensure the full conformity of a new Labour Code with the Convention, and to provide information on any progress made in this regard.***

*Article 3(1) and (2) of the Convention. Primary functions and additional duties of labour inspectors.* 1. *Supervision of union matters.* The Committee previously noted that, pursuant to section 2(c) of Decree No. 3273 of 26 June 2000, the labour inspectorate has the power to monitor vocational organizations and confederations at all levels in order to check whether the latter, in their operations, are exceeding the limits prescribed by law and by their rules of procedure and statutes. It recalls that for many years it had requested the Government to take steps to limit labour inspectors' intervention in internal trade union affairs. The Committee notes the Government's reply in its report that the role of labour inspectors is limited to accessing union records and to cases where a union submits its final account or a union council member files a complaint. The Government indicates that there are currently no complaints in this respect with the Department of Labour Relations and Trade Unions. The Committee further notes the statistics provided by the Government indicating that, in 2015, the labour inspectorate supervised 207 trade union elections and received 13 applications for authorization to establish unions.

In this respect, the Committee recalls that, according to *Article 3(1)* of the Convention, the primary functions of the labour inspection system shall be to monitor and secure the conditions of work and the protection of workers while engaged in their work, and that in accordance with *Article 3(2)*, any further duties which may be entrusted to labour inspectors shall not be 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. Further, the Committee expressed reservations in its 2006 General Survey, *Labour inspection,* paragraph 80, regarding excessive use of close supervision by labour inspectors of the activities of trade unions and employers' organizations, to the extent that it takes the form of acts of interference in these organizations' legitimate activities. ***The Committee urges the Government to take the necessary steps, in the context of the ongoing labour law reform, to ensure that the functions assigned to labour inspectors do not interfere with their main objective, which is to provide for the protection of workers in accordance with Article 3(1) of Convention No. 81. In this respect, it urges the Government to ensure that any supervision of trade union activities is carried out only in relation to the protection of the rights of trade unions and their members, and does not take the form of acts of interference in their legitimate activities and internal affairs.***

2. *Work permits for migrant workers.* The Committee notes the statistics provided by the Government indicating that, in 2015, a significant amount of the labour inspectorate's activities focused on the issuance (60,814) and renewal (148,860) of work permits, as well as inspections related to work permits (253). ***The Committee requests the Government to take specific measures to ensure that the functions assigned to labour inspectors to issue and monitor work permits do not interfere with the main objective of labour inspectors to secure the enforcement of legal provisions relating to conditions of work and the protection of workers, as required under Article 3(1) of the Convention. It requests the Government to provide information on the time and resources spent on labour inspection activities in these work areas, compared to activities aiming at securing the enforcement of legal provisions relating to conditions of work and the protection of workers.***

*Article 12(1) and (2). Right of inspectors to enter freely any workplace liable to inspection.* In its previous comments, the Committee requested the Government to amend the Memorandum No. 68/2 of 2009 which requires prior authorization in writing for all unscheduled inspection visits. It notes that, according to section 6 of Decree No. 3273 of 2000 on Labour Inspection, labour inspectors shall have the authority to enter freely and without prior notice all enterprises under their supervision during hours of work at the enterprise and all parts thereof; and in conducting an inspection visit they shall apprise the employer of their presence on the premises, unless they consider such information detrimental to the execution of their functions. However, the Committee also notes the Government's indication that written authorization is provided in order for an inspection to be carried out, and that inspections are carried out as part of an inspector's annual or monthly programme. In this regard, the Committee recalls that *Article 12* of the Convention provides that labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. It recalls that the requirement to obtain prior permission to undertake an inspection in all cases constitutes a restriction on the free initiative of inspectors to undertake an inspection, including where they have reason to believe that an undertaking is in violation of the legal provisions. ***The Committee once again requests the Government to take measures to amend Memorandum No. 68/2 of 2009 to ensure that labour inspectors provided with proper credentials are empowered to enter freely any workplace liable to inspection, in accordance with Article 12(1) of the Convention, and to provide copies of any texts or documents showing progress in this regard.***

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

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

## Pakistan

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)

*Articles 3(1) and (2), 4(2), 10 and 16 of the Convention. Effective organization of the labour inspection services and the supervision and control by central labour inspection authorities at the provincial levels. Number of labour inspectors and number and thoroughness of labour inspections.* The Committee previously noted a serious shortage of labour inspectors in relation to the number of workplaces liable to inspection. It also noted that the provincial labour directorates had a number of functions, such as the registration of trade unions and the conciliation and settlement of industrial disputes, not related to the primary duties of labour inspectors (as defined in *Article 3(1) of the Convention*).

The Committee notes the Government's statement in its report that the provincial governments are working to strengthen the labour inspection staff and expand their area of activities. In this respect, it takes due note of the information provided by the Government in its annual labour inspection report of 2018 that there has been a slight increase in the overall number of inspectors compared to the information in the 2017 annual labour inspection report in the provinces of Punjab (from 221 labour inspectors and 13 mine inspectors in 2017 to 225 labour inspectors and 13 mine inspectors in 2018), Sindh (117 labour inspectors and 26 mine inspectors in 2017 to 132 labour inspectors and 21 mine inspectors in 2018) and Khyber Pakhtunkhwa (KPK) (40 labour inspectors in 2017 and 50 in 2018). The Committee notes that one province saw an overall decrease (Balochistan with 73 labour inspectors and nine mine inspectors in 2017 down to 63 and 16 in 2018), and it notes that for Balochistan (37 per cent), KPK (46 per cent) and Sindh (30 per cent), a significant proportion of authorized positions are vacant. The Committee further notes the information provided by the Government on the number of inspections undertaken by the respective inspectorates and the number of workers covered by these inspections, as well as the Government's indication that the approximate labour force of Pakistan was 65.5 million in 2017–18. With respect to data, the Government indicates that the provincial reporting of data concerning labour inspection is progressing, but that there are sometimes differences in the reported data in different reports.

With respect to the Committee's previous request on additional duties assigned to labour inspectors, the Committee notes the Government's statement that the additional duties do not interfere with the effective discharge of their primary duties under *Article 3(1)* of the Convention. It states that, for example with respect to Punjab, the time spent performing additional functions like registration of trade unions, conciliation and settlement of industrial disputes by labour inspectors, is approximately 5 per cent of the total working time, which leaves ample time to perform primary duties. With respect to this diversion of labour inspector time for additional duties, rather than the primary duties of monitoring and securing the conditions of work and the protection of workers while engaged in their work, the Committee recalls that, according to *Article 3(2)* of the Convention, *any further duties* which may be entrusted to labour inspectors should not be 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. ***The Committee urges the Government to pursue its efforts to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate, including by filling the vacant positions in each province. It requests the Government to continue to ensure the availability of accurate information on the number of labour inspectors in each province and to continue to provide information on the number of labour inspectors (as well as vacant positions) and labour inspections performed in each province. The Committee also requests the Government to provide further information on the measures taken to strengthen the authorities responsible for labour inspection in the four provinces. In this respect, the Committee once again requests the Government to provide an organizational chart of the labour inspection services in each province.***

*Article 12. Free access of labour inspectors to workplaces.* In its previous comment, the Committee noted that the 2017 Sindh Occupational Safety and Health (OSH) Act restricts the conduct of inspection visits to "any reasonable time" (and only permits entry "at any time" in situations that are or may be dangerous) (section 19). It recalled that according to *Article 12* of the Convention, labour inspectors shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. It also noted the 2019 Punjab OSH Act, which covers labour inspection, did not contain any provisions related to the power of labour inspectors to freely enter workplaces liable to inspection without prior notice.

The Committee notes the Government's reiterated indication that labour inspectors may enter workplaces freely and without previous notice, pursuant to the Factories Act of 1934 and the Mines Act of 1923. It notes in this respect the information provided by the Government on the applicable legislation in the respective provinces, indicating that the Factories Act of 1934 is not applicable in the provinces of KPK and Sindh, which adopted provincial Factories Acts in 2013 and 2015, respectively.

In this respect, the Committee notes the provisions on the powers of inspectors in the Factories Act of 1934, the Sindh Factory Act of 2015 and the KPK Factories Act of 2013, which do not specifically refer to entry without prior notice while providing that inspectors may enter establishments (which are liable to inspection, or which they have reason to believe to be liable) as they think fit, subject to any rules made by the Government (section 11 of the Factories Act of 1934, section 12 of the KPK Factories Act and section 13 of Sindh Factories Act). ***The Committee requests the Government to take the necessary measures to ensure that labour inspectors in all provinces are empowered in law and practice to enter any workplace liable to inspection freely and without previous notice at any hour of the day or night, as provided for in Article 12(1) of the Convention. It requests the Government to provide information on any rules (or legislation) adopted with an impact on the exercise of the powers of inspectors referred to in section 11 of the Factories Act of 1934, section 12 of the KPK Factories Act and section 13 of Sindh Factories Act. It also requests the Government to provide information on the exercise of this right in practice in the***

***provinces of KPK and Sindh, indicating the number of inspections conducted with and without prior notice.***

*Articles 17 and 18. Effective enforcement. Sufficiently dissuasive penalties for labour law violations and for obstructing labour inspectors in the performance of their duties.* The Committee welcomes the information provided, in reply to the Committee's previous request concerning enforcement and in the annual labour inspection report of 2018, concerning the number of infringements detected, the number of convictions, and the amount of fines imposed by the Directorates of Labour and Departments of Mining of each province. It also notes the Government's statement, in response to the Committee's previous request related to the obstruction of labour inspectors, that there have been no cases reported relating to obstruction of labour inspectors in their duties in all Provinces. Concerning the Committee's previous request regarding progress made to provide for increased penalties, the Committee further notes the Government's reference to the adoption, in January 2020, of the KPK Mines Safety, Inspection and Regulation Act, 2019, which revised and raised the applicable fines in the case of violations in mining. ***Noting that the Government previously referred to draft labour legislation providing for increased penalties in Balochistan and Sindh, the Committee requests the Government to continue to provide information on the progress made with respect to increasing the level of fines and other penalties for labour law violations and the obstruction of labour inspectors in their duties in each of the provinces. It also requests the Government to continue to provide information in relation to each of the provinces on the number of violations detected, the number of such violations which resulted in prosecution, and subsequent convictions, and both the number and amount of the fines imposed, and to provide information on the proportion of imposed fines that are paid in practice for each province. Noting the Government's indication that no cases have yet been reported related to any obstruction of labour inspectors in their duties, the Committee urges the Government to provide information on the possible reasons for this lack of reporting, including whether it is related to a lack of sufficiently detailed inquiry, or to inspectors' reluctance to initiate such reports. It requests the Government to provide information on any cases reported in the future, in relation to each of the provinces, including the outcome of the case and the specific penalties applied (including the amount of fines imposed).***

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

## Paraguay

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

The Committee takes note of the observations of the National Confederation of Workers (CNT) and the Confederation of Workers Authentic (CUT-A), received in 2019.

*Articles 6, 7, 10 and 11 of the Convention. Labour inspectors. Status and conditions of service, recruitment, training, number and material conditions of work.* In relation to its earlier comments, the Committee notes from the Government's report that the establishment of the Ministry of Labour, Employment and Social Security (MTESS) by Act No. 5115 of 2013 has improved labour inspectors' working conditions. The Committee notes in particular the information provided by the Government to the effect that: (i) their remuneration is higher than that under the former Ministry of Justice and Labour; (ii) open competitions have been held for the recruitment of new inspectors to the public service: the MTESS employed 31 inspectors in 2015 and 25 inspectors in 2019; (iii) the new inspectors have received training through the training plan put in place by the ILO Country Office for the Southern Cone of Latin America, and continuous training was given to inspectors from 2015 to 2019 in areas including forced labour, child labour, and occupational safety and health; and (iv) new office space has been allocated to the Directorate for Labour Inspection and Monitoring (DGIF), and the inspectors are provided with all office supplies.

The Committee notes in its observations that the CUT-A remains concerned that: (i) the number of inspectors (fewer than 30 in all), is insufficient to cover the entire national territory; (ii) there is a lack of initial and continuous training for inspectors and no profile whereby to determine the requirements for their posts; (iii) there is a lack of inspectors holding public servant status. Instead, inspectors are contracted employees, which prevents them from performing their functions fully; and (v) inspectors are poorly remunerated. The Committee also notes from the CNT's observations with regard to public sector workers that the contracted employees do not enjoy the same employment conditions as appointed public servants, for example, the right to a retirement pension, healthcare or cover against occupational risks, occupational accidents and diseases.

The Committee notes from the information provided by the Government that all inspectors who entered the service in 2015 did so through a merit-based competition and enjoyed the status of temporary public servants, while 22 of the 25 inspectors employed in 2019 held the status of temporary public servants, while three inspectors held the status of permanent public servants. In that connection, the Committee notes the Government's indication that inspectors obtain their posts through open competition in conformity with sections 15 and 35 of Act No. 1626 of 2000 on the Public Service, and Decree No 3857 of 2015, which approves the general regulations governing selection for entry and

promotion in the public service for permanent and temporary posts. Section 8 of the Decree cited establishes merit-based competition as the technical mechanism of selection for the recruitment of persons to the public administration, applicable, inter alia, to technical, daily wage or professional posts.

The Committee recalls in respect of the temporary recruitment of labour inspectors, apparently the case for the large majority of inspectors, that that form of recruitment is not in conformity with *Article 6* of the Convention, which provides that the status and conditions of service of the inspection staff must be such that they are assured of stability of employment and are independent of changes of government and of improper influences. ***The Committee urges the Government to take the necessary measures to ensure that the status and conditions of service of labour inspectors comply with the requirements of Article 6 of the Convention. In that respect, it also requests the Government to provide additional information of the salary structure and benefits applicable to labour inspectors and to public servants who perform similar functions in other government services (such as tax inspectors or the police). The Committee also requests the Government to indicate the measures taken or envisaged to increase the number of labour inspectors. The Committee further requests the Government to continue providing information on the number of inspectors and their distribution by region, their status and conditions of service, giving details of the method employed for their recruitment and of their remuneration. The Committee also requests the Government to provide information on the number of suitably equipped local offices, as well as on availability of transport facilities necessary for the performance of labour inspectors' duties, in accordance with Article 11 of the Convention.***

*Articles 11, 12, 16 and 18. Application in the Chaco region.* Further to its earlier comments on the creation of labour law enforcement units in the Chaco region, the Committee notes that CUT-A indicates deep concerns in its observations at the shortcomings in labour inspection in that region, and that although the Government has opened an MTESS office there, the office has neither the means nor the independence to monitor possible irregularities in situ, and that the inspectors are only able to enter rural properties under court order. Moreover, CUT-A points out that not only do workers have to go to the MTESS office to register their complaint, but they must also deliver the official notice to their employer summoning the employer to clarify the situation. ***The Committee requests the Government to communicate its comments in respect of the CUT-A's observations. With reference to its comments under the Forced Labour Convention, 1930 (No. 29), the Committee requests the Government to provide information on the functioning of the MTESS office established in the Chaco region and its impact on the application of the legislation on the working conditions and protection of workers in that region, including information on the number of inspection visits undertaken, the violations detected and the penalties imposed. The Committee also requests the Government to provide information on the number of labour inspectors at work in the region.***

*Article 12(1)(a). Restrictions on labour inspectors freely to enter workplaces liable to inspection*. In its previous comments the Committee once again requested the Government to take the necessary measures, including through the amendment of Resolution No. 1278 of 2011 (which provides technical and legal guidance on aspects of the inspection and monitoring services and summary inspection procedures), to ensure that labour inspectors are empowered to enter freely any place liable to inspection. In that connection, the Committee notes the information provided by the Government to the effect that Resolution No. 47 of 2016 approved the general inspection procedure for monitoring labour, social security and occupational safety and health legislation, and repealed sections 1.1 and 1.19, on inspection processes, of Resolution No. 1278.

The Committee notes that article 3 of Resolution No. 47 provides that: (i) the general inspection procedure may be initiated ex officio, or by inspection order signed by the Minister or Vice-Minister of Labour, or at the request of a party. Once initiated, the DGIF will submit the complaints and/or requests for inspection to the legal counsel of the Vice-Minister of Labour, for a ruling on whether or not to proceed with an inspection (section 1.1.); (ii) in order to carry out inspections in response to complaints or requests, the respective inspection orders must be issued. Where the legal counsel of the Vice-Minister of Labour deems the orders inappropriate, they will be dismissed and filed (section 1.1.); (iii) in the case of an ex officio inspection or inspection at the request of a party (following acceptance of the request or complaint), the Director-General of Labour Inspection and Monitoring will submit a draft inspection order to the Minister or Vice-Minister of Labour for consideration (section 1.2.); (iv) the inspection orders must, among other requirements, be signed by the Minister or Vice-Minister; they are otherwise void (section 1.2.); (v) inspectors holding an inspection order are empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection and to remain there for the time required; and, (vi) to broaden the scope of the inspection (to monitor aspects not included under the inspection order), the inspectors must inform the Director-General of Labour Inspection and Monitoring, so that the Director-General may propose the consequent broadening of the inspection order to the Minister or Vice-Minister, including in the event of detection of imminent danger to the lives, physical integrity, safety and health of the workers (section 1.2.).

The Committee notes that Resolution No. 56 of 2017 amplifies Resolution No. 47 and approves the regulations governing the procedures for ensuring compliance with labour, social security, and occupational safety and health standards, and those for addressing non-compliance. Those regulations provide that: (i) the inspector dealing with the complaint alleging non-compliance and/or request for inspection shall submit the complaint to the Director-General of the DGIF for consideration (section 1); (ii) on receipt of the complaint and/or the request for inspection, the Director shall forward it to the Chief Legal Counsel of the Vice-Ministry of Labour, who shall decide whether or not an inspection is appropriate; if so, the DGIF shall submit the draft inspection order to the Minister or Vice-Minister of Labour (section 2); (iii) where the action is ex officio, the DGIF shall submit the draft inspection order for signature by the Minister or Vice-Minister (section 3); and (iv) Following endorsement by the Minister or Vice-Minister, the order shall be forwarded to the DGIF (section 4).

The Committee notes that by virtue of Resolutions Nos 47 and 56, only inspectors in possession of an inspection order signed by a higher competent authority (the Minister or Vice-Minister of Labour) may enter freely, at any hour of the day or night any workplace liable to inspection. The Committee recalls that *Article 12* of the Convention provides that labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. The Committee also recalls that the requirement to obtain prior authorization before an inspection constitutes a restriction on the freedom of inspectors to conduct inspections, especially if they have reason to believe that an enterprise is violating compulsory legal provisions. ***The Committee therefore urges the Government to adopt without delay the necessary measures to amend MTESS Resolutions No. 47 of 2016 and 56 of 2017, on inspection procedure, to ensure compliance with labour, social security and safety and health standards, so as to guarantee that inspectors provided with proper credentials are able to enter freely any workplace liable to inspection, in accordance with Article 12(1)(a) of the Convention, without the need to obtain previous higher authorization.***

*Article 16. Frequency and thoroughness of labour inspections.* The Committee notes that section 3(2.1) of Resolution No. 47 provides that: (i) more than one inspection visit may be made under one inspection order wherever the first visit has not made possible collection of all relevant data; and (ii) in no case may more than two visits be made under one inspection order.

In addition, the Committee notes from the observations of the CNT that for the period between 16 August and 1 November 2019 (slightly over two months) 98 enterprises where allegations of non-compliance with labour standards had been registered received inspection visits. The CNT points out, however, that while that figure represents a twofold increase in the number of monthly visits (about 40 visits) compared to the monthly average in 2017 and part of 2018, it is not even equivalent to one per cent of all enterprises listed, as at June 2019, by the Directorate for the Registration of Employers and Workers (59,567 enterprises nationwide). Consequently, the CNT indicates that the labour inspection is not fulfilling its fundamental role of ensuring compliance with the labour laws. ***The Committee requests the Government to indicate the measures adopted or envisaged to ensure that workplaces are inspected as frequently and as thoroughly as is necessary to guarantee the effective application of the relevant legal provisions, in conformity with Article 16 of the Convention.***

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

## Peru

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee also notes the observations on the Convention made by the Autonomous Workers' Confederation of Peru (CATP), received in 2019, which refer to various issues raised by the Committee in its previous comment.

Moreover, the Committee notes the observations of the CATP, received in 2020 together with the Government's report, which reiterate its 2019 observations and also refer to the following issues: (i) Legislative Decree No. 1499 (May 2020) amended section 6 of Act No. 28806 (the General Labour Inspection Act) by eliminating the advisory role that labour inspectors had towards employers and workers; consequently, employers presented a high number of requests for suspension of workers in the midst of the COVID-19 pandemic which were not in conformity with legal requirements and were declared invalid by the administrative labour authority; (ii) the number of labour inspectors in the National Labour Inspection Authority (SUNAFIL) is insufficient; this implies an overload for inspectors which is an obstacle to the effective accomplishment of their functions; (iii) labour inspection only covers the private sector, which means that workers in the public sector are not covered; (iv) the SUNAFIL does not provide safe and healthy working conditions to labour inspectors, including the necessary preventative and protective measures in the context of the current pandemic; (v) the SUNAFIL's training centre does not adequately plan its activities, which has a negative impact on the training of the inspectorate's personnel; (vi) the labour inspectorate is not notified of work accidents occurring in the informal economy and therefore

they are not investigated; (vii) the SUNAFIL does not have a work plan which would ensure the regular sanctioning of recidivist enterprises, the monitoring of frequent violations and the application of the sanctions imposed by the competent bodies based on the inspectorate's work; and (viii) since 2015, annual labour inspection reports have not been published on the official webpage. ***The Committee requests the Government to transmit its comments in response to these serious allegations.***

*Articles 6 and 15(a) of the Convention. Legal status and conditions of service of inspectors.* In its previous comments, the Committee noted the Government's indication that the SUNAFIL and the regional governments had not yet incorporated the new civil service system envisaged by the Civil Service Act No. 30057 of July 2013 and that their employees were still governed by the labour legislation regulating private enterprises until the public service career system was implemented. In this regard, the Committee notes the Government's indication in its report that, as of June 2019, the National Civil Service Authority (SERVIR) includes 463 entities that are in the process of implementing the system envisaged by the Civil Service Act, and that these include the SUNAFIL and 17 regional governments. Moreover, the Government indicates, in its supplementary information, that the implementation of the new civil service system is progressive, by entities and offices, and that it is done in four stages (preparation of the institution concerned, analysis, implementation of internal improvements, and competitions under the new system) as provided for in the document entitled "Procedure for the transition of a public institution to the civil service system under Act No. 30057" approved by Presidential Resolution No. 034-2017-SERVIR/PE. The Government adds that the SUNAFIL is at stage two of the process and that its transition is therefore not yet finalized. The Government indicates that the integration of workers to the new civil service system can only happen once the institution concerned has completed the transition process. The Government also adds that those who perform labour inspection functions in regional governments, and who had been transferred to SUNAFIL under Act No. 30814 on the strengthening of the labour inspection system, are not part of the transition process to the new civil service system. The Committee also notes that the CATP emphasizes the importance of the Government ensuring that the implementation of the Civil Service Act does not have a negative effect on the legal status and conditions of service of inspectors. ***The Committee requests the Government to indicate the number of inspectors who have already been transferred to the civil service system, those who are still in a transitional period, those for whom the transition has not yet commenced, and those who will not be part of the transition process at all. It also requests the Government to provide information on the impact that the integration of the labour inspectorate into the new civil service system has on the conditions of service, salary scales, and career prospects of staff of regional governments with inspections functions. In addition, the Committee requests that the Government provide information on the legal status of each of these categories of inspectors, with an indication of whether they all benefit from guarantees, such as stability of employment, independence of changes of government and of improper external influences, irrespective of whether or not they have been included in the civil service system. The Committee further requests the Government to provide information on the salary scales, benefits and career prospects of labour inspectors in relation to other comparable categories of public servants engaged in similar functions in other Government services, such as tax inspectors and the police.***

*Articles 12(1)(a) and (c), and 15(c). Scope of the right of free entry of labour inspectors into workplaces liable to inspection.* In previous comments, the Committee noted that the provisions of the General Labour Inspection Act, and particularly sections 10 to 13, make inspections conditional on an order from a higher authority. The Committee once again notes with ***regret*** that there has been no progress in this regard and that these provisions of the General Labour Inspection Act remain in force. The Committee recalls that in its 2006 General Survey on Labour Inspection, in paragraphs 265 and 266, it indicates that the different restrictions placed in law or in practice on inspectors' right of entry into workplaces, such as restrictions on the free initiative of inspectors in this regard through the requirement for formal authorization issued by a higher authority or another competent authority, can only stand in the way of achieving the objectives of labour inspection as set out in the instruments. ***The Committee once again requests the Government to take the necessary measures to ensure that, in law and practice, inspections are not subject to an order issued by a higher authority.***

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

## Poland

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1995)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded

with the examination of the application of the Conventions on the basis of the supplementary information received from the Government this year, including the summary of the annual labour inspection report of 2019 (see *Article 3(1)* and *(2) of Convention No. 81* and *Article 6(1)* and *(3) of Convention No. 129* below), as well as on the basis of the information at its disposal in 2019.

The Committee takes note of the observations of the Independent and Self-Governing Trade Union "Solidarnosc" received on 19 August 2019, and the Government's reply to these observations received on 26 September 2019.

*Articles 2(1), 5(a), 6, 12(1) and 16 of Convention No. 81 and Articles 4, 6, 12, 16(1) and 21 of Convention No. 129. Coverage of workplaces by labour inspection. Restrictions on collaboration between labour inspection officials and other public institutions and on inspectors entering workplaces freely.* The Committee previously noted the limitations on the work of the labour inspectorate in the Act on Freedom of Economic Activity (AFEA) related to prior authorization by the inspection authority, as well as practical difficulties it posed in inspecting workplaces with multiple employers and the conduct of joint inspections. The Committee notes that the Entrepreneurs' Law, adopted in 2018, replaced the AFEA. It notes that pursuant to sections 48(1) and 54(1) of the Entrepreneurs' Law, prior notice to the entrepreneur is required and the undertaking of simultaneous controls of an entrepreneur's activities are not permitted, but that sections 48(11)-(1) and 54(1)-(8) state that these restrictions do not apply if the inspection is carried out on the basis of a ratified international agreement. With respect to authorization, the Committee takes note of the Government's indication that prior authorization by the inspection authority seeks to ensure transparency, reliability, validity, and legitimacy of public administrative bodies. It notes that pursuant to section 49(1) and (2) of the Entrepreneurs' Law, labour inspectors are empowered to conduct controls without prior presentation of the authorization from the inspection authority only in cases where control activities are necessary to prevent a crime or offence or securing evidence that such an offence has been committed, or when inspections are justified by a direct threat to life and health or environment, so long as such authorization is presented later to the entrepreneur within three days from the date of initiation of a control. Furthermore, the Committee notes that the Entrepreneurs' Law empowers inspectors to carry out control activities only during working hours (section 51(1)).

The Committee recalls that according to *Article 12* of Convention No. 81 and *Article 16* of Convention No. 129, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. ***The Committee requests the Government to ensure that the Entrepreneurs' Law is amended to provide without qualification that labour inspectors with proper credentials are empowered to enter freely any workplace liable to inspection, in accordance with Article 12(1) of Convention No. 81 and Article 16(1) of Convention No. 129. Noting the absence of the information, the Committee once again requests the Government to indicate whether the conduct of joint inspections with other public authorities, including the State Sanitary Inspection and the Road Transport Inspectorate, is possible under the Entrepreneurs' Law.***

*Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Additional functions entrusted to labour inspectors, and labour inspection activities for the protection of migrant workers in an irregular situation.* The Committee takes note of the Government's indication, in reply to its previous request, that the National Labour Inspectorate (NLI) supervises and controls compliance with legal provisions related to OSH and the legality of employment of both Polish citizens and migrant workers. The NLI's controls cover visas and other residence permits or work permits, the conclusion of written employment contracts or civil law contracts, and compliance with labour legislation. The NLI predominantly targets entities where migrant workers from outside the EU/EEA and Switzerland are engaged in work due to the high risk of irregularities. Controls are initiated based on the results of past controls, or referrals and complaints lodged by other institutions, including the Border Guard. The Government indicates that the NLI's controls can also be initiated based on complaints made by migrant workers, predominantly concerning non-payment of wages or the lack of written employment contracts. Moreover, the NLI's controls focus on temporary employment agencies, as well as employers sending workers to Poland and employers in Poland posting workers to other countries.

The Committee notes the statistics provided by the Government indicating that in 2018, a total of 7,817 controls were undertaken on the legality of employment of migrant workers which detected labour law violations related to the payment of wages and other benefits (related to 1,555 migrant workers), medical examinations (780 migrant workers), OSH trainings (1,370 migrant workers), records of working hours (662 migrant workers), and other working time regulations including rest periods (569 migrant workers). These inspections also detected a lack of work permits (related to 3,101 migrant workers), employers' non-adherence to the terms and conditions under work permits or residence permits (related to 1,087 migrant workers), and violations related to employers' obligation to conclude written contracts (916 migrant workers). The Government indicates that labour inspectors issued decisions or oral orders to correct these violations. It further indicates that infringements of labour law provisions result in notifications by the NLI to the social insurance institution, the head of the customs and revenue office, and the police or the Border Guard. The Committee also notes with ***concern*** that, according to the 2018

annual labour inspection report, available on the website of the NLI, the NLI performed 176 joint inspections with the Border Guard, and that the NLI sent 711 notifications to the Border Guard of cases regarding the illegal performance of work by migrant workers. The same report also indicates that the Chief Labour Inspector signed a new cooperation agreement with the Chief Border Guard to cope with a dramatic increase in the number of migrant workers from outside the EU. The Committee further notes the Government's indication in its supplementary report that in 2019, labour inspectors conducted 8,348 controls of the legality of employment and performance of work by migrant workers, which represented a 7 per cent increase from 2018. In addition, according to the summary of the 2019 labour inspection report, the NLI controlled the legality of work performed by 43,400 migrant workers in 2019, among which, 5,947 persons were found engaged in "illegal" work (related to the lack of the required work permit in the majority of cases).

The Committee notes that the observations of Solidarnosc refer to, among the new tasks undertaken by the inspectors, the increased control activity on the legality of employment of migrant workers. ***The Committee urges the Government to take measures to ensure that the additional functions assigned to labour inspectors do not interfere with the main objective of labour inspectors, which is to provide for the protection of workers in accordance with Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129. In this respect, it requests the Government to provide information on the manner in which it ensures that cooperation with other authorities such as the Border Guard does not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers, in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. The Committee also requests the Government to indicate the manner in which the NLI ensures the enforcement of employers' obligations with regard to the statutory rights of migrant workers, including those in an irregular situation. It also requests the Government to provide information on the orders issued by labour inspectors related to labour law violations (such as orders for establishing an employment contract, payment of overdue wages or other benefits resulting from their work) concerning migrant workers in an irregular situation, and the results obtained from such orders.***

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

## Portugal

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1983)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020) and the information in the 2018 report on the activities of the Working Conditions Authority (ACT). Moreover, the Committee notes the observations made by the General Confederation of Portuguese Workers–National Trade Unions (CGTP–IN), the General Workers' Union (UGT) and the Confederation of Portuguese Business (CIP), communicated with the Government's report.

The Committee further notes the observations made by the UGT, and the Confederation of Trade and Services of Portugal (CCSP) received in 2020, communicated with the Government's supplementary information. It notes that the UGT alleges that the ACT: (i) focuses on prevention at the expense of inspections and application of penalties; (ii) insufficiently coordinates its work with social partners; and (iii) issues its activity reports on inspections at irregular intervals and with many delays. ***The Committee asks the Government to provide its comments in this respect.***

The Committee notes that a representation under article 24 of the ILO Constitution was submitted to the Governing Body by the Union of Labour Inspectors (SIT), alleging non-compliance by Portugal with the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155). At its 340th Session (October–November 2020), the Governing Body decided that it was receivable and to designate a tripartite committee for its examination (GB.340/INS/19/8, paragraph 5). The Committee notes that the allegations contained in the representation refer to *Articles 7 and 10 of Convention No. 81,* and *9 and 14 of Convention No. 129* concerning training and number of labour inspectors. In accordance with its usual practice, the Committee has decided to suspend its examination of these issues pending the decision of the Governing Body in respect of the representation.

*COVID-19 measures.* The Committee appreciates the efforts of the Government to provide information on the labour inspection measures taken by the Government in the context of the COVID-19 pandemic, including Decree No. 2-C/2020 of 17 April 2020, regulating the extension of the state of emergency decreed by the President of the Republic, which foresees strengthening the resources and

powers of the ACT. The Committee also notes that CCSP indicates that a working group was established to monitor labour matters during the crisis arising from the COVID-19 pandemic, chaired by the Inspector General, with the participation of social partners, and that this group monitored the implementation of emergency measures and included a report on the inspections conducted by the ACT.

*Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Status and conditions of service of labour inspectors.* The Committee takes note of the information provided by the Government in its report in response to the Committee's previous request concerning overtime. It also takes note of the Government's indication that the career of labour inspectors, as well as their development, is provided for in Decree-Law No. 112/2001, which establishes the legal framework and defines the structure of the inspection careers of the Public Administration. In addition to the base salary provided for in that Decree-Law, inspectors are also entitled to a supplement for the exercise of the inspection function amounting to 22.5 per cent of the base salary. The Committee notes the Government's indication that pursuant to this Decree-Law, a new career and remuneration system will be implemented for labour inspectors. In this regard, the Committee takes note that the UGT indicates that it has opposed the worsening of working conditions for labour inspectors and their lack of career prospects (which prevents progression). The union further indicates that, in 2018, a tripartite agreement was signed called "Combating precariousness and reducing labour segmentation and promoting greater dynamism in collective bargaining", which includes measures aimed at strengthening the conditions of service of the ACT. The UGT indicates that the agreement provides for measures to strengthen conditions of service at the ACT, the number of labour inspectors, the information systems of the ACT and mechanisms for hearing the views of the social partners. ***The Committee requests the Government to continue to provide information on measures taken to improve the conditions of service of labour inspectors, including the results obtained through the implementation of the 2018 tripartite agreement. In this respect, it requests information on the measures taken, including within the context of the new career and remuneration system, to ensure that the remuneration levels and career prospects for labour inspectors are commensurate with that of other public officials exercising similar functions. In addition, the Committee requests information on stability of employment for labour inspectors (excluding management positions), including information on the proportion of inspectors with two years, five years, and more than eight years on the job.***

*Articles 9 and 10 of Convention No. 81 and Articles 11 and 14 of Convention No. 129. Technical experts and sufficient number of labour inspectors.* In its previous comments, the Committee welcomed the Government's indication that the ACT was in the process of recruiting 117 labour inspectors. It notes that in September 2019 and in May 2020, an additional 53 and 80 new inspectors were recruited respectively, raising the total number of labour inspectors to 417 by 2020 (compared with 359 inspectors in 2012). The Committee also notes the Government's indication that, in addition to labour inspectors, the ACT has a total of 505 support staff (as compared to 514 in 2016) and that a number of competitions have been opened for the recruitment of senior technicians. In this regard, the Committee takes note that the CGTP–IN states that both the number of labour inspectors and support staff are still insufficient to ensure the effective exercise of the functions of the inspection service. The CGTP–IN also indicates that the ACT does not ensure the presence of at least one occupational safety and health technician in each regional office. ***The Committee welcomes the Government's efforts to ensure the recruitment of a sufficient number of labour inspectors to secure the effective discharge of the duties of the inspectorate, and requests it to continue to provide information on any further measures taken in this respect. It also requests the Government to continue to provide information on the training or other measures taken to facilitate the rapid integration of these new inspectors. Lastly, it requests the Government to provide information on the measures taken to ensure that duly qualified technical specialists are associated with the work of inspection.***

*Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Adequate frequency and thoroughness of inspections to secure compliance.* In response to its previous request concerning an inspection strategy pursued to achieve a satisfactory coverage of workplaces by sufficiently thorough labour inspection visits, the Committee notes the Government's indication that the definition of inspection priorities is based on: (i) the monitoring of undertakings where accidents at work have occurred or occupational diseases have been detected; and (ii) consideration of the number of workers potentially covered by the situations considered to be the most serious for their safety or physical and mental health. The Government indicates that the new information system will contribute to a more efficient and effective planning of the inspection action. The Government states that, in this process, the employers' and workers' organizations represented on the ACT's Consultative Board are consulted, having agreed on the Iberian Campaign for the Prevention of Accidents at Work (2016–18) and the National Campaign for Safety and Health for Temporary Workers (2016–18).

The Committee notes that the CGTP–IN asserts that the number of inspection visits has decreased dramatically over the years, as well as the number of workplaces visited and the number of workers covered. In this regard, the Committee notes the substantial decrease in the number of inspections (from 90,758 in 2011 to 37,482 in 2017), the number of undertakings inspected (from 80,159 in 2011 to 24,584

in 2017) and the number of workers covered (from 609,343 in 2011 to 317,838 in 2017). However, it also notes that over the same period, the number of violations detected increased from 17,607 in 2011 to 24,352 in 2017. In this regard, the Committee notes that the Government indicates that in 2013, there was a change in the statistical criteria for collecting information on the number of inspection visits and workplaces visited to avoid inflating the data by counting a visit to the same workplace that covered different subjects as a new visit. The Government further states that the data on the outcome of inspection visits indicate that there have been no significant changes in the number of penalties applied. The Committee notes, in addition, that according to the information in the 2018 report on the activities of the ACT, there has been increase from 2017 to 2018 in the number of inspections (38,287 in 2018), number of undertakings inspected (25,200), workers covered by inspections (399,836) and violations detected (26,465). ***Recalling the importance of ensuring that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, the Committee requests the Government to continue to provide information on developments related to the overall number of labour inspections undertaken and workers covered. In this respect, the Committee requests the Government to continue to provide information on the number of inspections that are planned versus the number that are reactive to complaints or accidents; the average or normal duration of planned versus reactive inspections; and the nature and number of violations identified and sanctions pursued for each type of inspection.***

The Committee is raising other matters in a request addressed directly to the Government which reiterates the content of its previous request adopted in 2019.

## Qatar

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year and the annual labour inspection report for 2019 submitted by the Government (see *Articles 3, 5(a), 7, 10, 9, 12, 13, 16, 17, 18* and *21(e)* below), as well as on the basis of the information at its disposal in 2019.

*COVID-19 measures.* The Committee appreciates the efforts of the Government to provide information in its report regarding various measures taken in 2020 in the context of the COVID-19 pandemic, including the monitoring undertaken by the Occupational Safety and Health (OSH) Unit of the Labour Inspection Department, through periodic and surprise inspections. The Government provides information on the implementation of awareness-raising and information campaigns, the establishment of inter-ministerial working groups and the creation of a hotline service to receive complaints and observations from workers.

*Technical cooperation.* Following its previous comments, the Committee welcomes the information in the Government's report concerning the progress achieved in the context of the technical cooperation programme between the Government and the ILO (2018–20), particularly the second pillar which concerns improving the labour inspection and OSH systems. In this respect, the Committee notes with ***interest*** the adoption of the labour inspection policy in April 2019. This policy was developed on the basis of the Assessment of the Qatar Labour Inspection System, prepared by the Ministry of Administrative Development, Labour and Social Affairs and the ILO. The policy includes the collection of data, the implementation of an evidence-based strategy and measures to ensure transparency and accountability of inspections. The Committee notes the information provided by the Government in its supplementary report that it is working on the implementation of the policy, which has been disseminated among all labour inspectors, and that the strategy for implementation focuses on data collection and analysis, and continuous capacity-building of inspectors. ***The Committee requests the Government to continue to provide detailed information on the measures taken in the context of the ongoing technical cooperation to strengthen the implementation of the Convention, including on the implementation of the labour inspection policy.***

*Articles 3, 12 and 16 of the Convention. Sufficient number of labour inspections and coverage of workplaces.* The Committee previously urged the Government to pursue its efforts with respect to strategic planning and the development of a modern strategic inspection plan. In this respect, the Committee notes with ***interest*** the Government's indication that in March 2019, the strategic unit of the labour inspectorate became operational and began working on developing a modern strategic inspection plan. The Government indicates, in response to the Committee's previous request on the establishment of priorities, that priorities and objectives for inspections have been identified related to recurrent issues, particularly the prevention of falls from heights and the payment of wages.

The Committee notes the Government's statement that in 2018, 21,178 undertakings were inspected, with a total of 43,366 inspection visits (compared with 44,550 inspections conducted in 2016). This included

19,328 labour inspection visits, 22,736 OSH inspection visits, and 1,302 inspection visits on wage protection. According to the information in the annual labour inspection report for 2019, 21,644 undertakings were inspected in 2019, with a total of 43,842 inspection visits (21,763 concerning working conditions and 22,079 concerning OSH). The Committee also notes the information provided in response to its previous comments, that most inspections on labour and on OSH did not detect any violations, but that 100 per cent of the wage protection inspections disclosed violations. The inspection visits resulted in: 1,419 infringement reports in 2018 and, for 2019, 235 such reports for OSH and working conditions and 2,318 reports related to the wage protection system; 6,548 warnings to remedy an infringement in 2018 and 8,127 in 2019; 797 suspensions of transactions with the Ministry of Administrative Development, Labour and Social Affairs in 2018 and 495 suspensions in 2019; and 3,524 cases where guidance was provided in 2018 and 3,509 cases in 2019. The information provided by Government indicates that approximately 70 per cent of visits in 2018 and 2019 did not detect any violations (31,078 inspections in 2018 and 30,357 such inspections in 2019 all in the labour and OSH areas).

The Committee takes due note of the information in the annual labour inspection report of 2019 that measures with immediate enforcement were taken in 1,070 cases concerning working conditions and 495 concerning OSH in 2019. The Committee also notes the information in the Government's supplementary report that between 1 January and 31 August 2020, 19,117 inspection visits to work sites were carried out (resulting in the issuance of 4,945 infringement reports), as well as 4,500 inspection visits to workers' accommodation (resulting in the issuance of 1,915 infringement reports), and transactions were suspended for 19,131 companies.

The Committee also notes the statement in the Assessment of the Qatar Labour Inspection System that at present, employers are sometimes given prior notice of inspections, either because the inspectors require more information on the location of the worksite, or to allow employers time to gather relevant documentation. The Assessment states that the practice of informing employers of imminent visits must cease, as the effectiveness of an investigation frequently depends on the unpredictability of the visit. ***Noting that over two thirds of OSH and labour inspection visits did not detect any violations but that all wage protection visits did, the Committee requests the Government to provide information on the most frequent categories of violation in the area of wage protection, as well as information regarding possible reasons for the low detection rates during labour and OSH inspections. It also requests the Government to continue to provide information on the activities of the strategic unit, including the implementation of the modern strategic inspection plan, as well as progress achieved with respect to the priorities and objectives established, including particularly on wages. Recalling that labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice any workplace liable to inspection in accordance with Article 12, it requests the Government to continue to provide information on the total number of inspections undertaken, as well as on the outcome of these visits, and to specifically indicate the number of these inspections that were unannounced and those that were undertaken with prior notice.***

*Articles 5(a), 17, 18 and 21(e). Effective cooperation between the labour inspectorate and the justice system, legal proceedings and effective enforcement of adequate penalties.* The Committee previously noted that labour inspectors, upon detecting non-compliance, draw up infringement reports which are then referred to the courts for further action. It noted that the outcome of most inspections was no further action. It also noted that the technical cooperation programme included a review of relevant legislation in order to strengthen the enforcement powers of labour inspectors.

In this respect, the Committee welcomes the Government's indication that plans are under way, in the context of the ongoing technical cooperation, to strengthen enforcement mechanisms and to provide labour inspectors with enhanced enforcement powers. The Government states that labour inspectors will be provided with clear guidance to follow, including the identification of situations requiring immediate action, such as the suspension of activities or the adoption of other stringent enforcement measures to address non-compliance. The Committee also notes the number of infringement reports referred to courts in 2019 was 235 related to working conditions and OSH and 2,318 under the wage protection system. It once again observes that no information on the outcome of these cases has been provided, but notes the Government's statement, in reply to the Committee's previous request, that work is under way to provide these statistics. The Committee further notes the statement in the Assessment of the Qatar Labour Inspection System that the Labour Inspection Department does not have readily available information on penalties, fines or imprisonment imposed by the judiciary and that inspectors had expressed frustration with the judiciary's failure to inform them of the outcome after their referral of a company for court proceedings. In this respect, it notes with ***interest*** the Government's reference to a Memorandum of Understanding between the Ministry of Administrative Development, Labour and Social Affairs and the Supreme Judicial Council, which aims to establish electronic information sharing on the cases referred to courts, the judgments handed down, and relevant appeals. The Committee notes the information in the Government's supplementary report that the Memorandum also includes the possibility of sharing copies of employment contracts and information on the transfer of wages. The

Government indicates that the Memorandum constitutes a first step towards improving cooperation and efficiency, helping litigants and providing support to workers in the country. ***The Committee urges the Government to continue to pursue its efforts, in the context of the ongoing technical cooperation programme, to strengthen the effectiveness of enforcement mechanisms, including measures to provide enhanced enforcement powers to labour inspectors. It requests the Government to continue to provide specific information on the measures taken to promote effective collaboration between the labour inspectorate and the judicial system, including the implementation of the Memorandum of Understanding. It once again urges the Government to provide information on the outcome of cases referred to the judiciary by labour inspectors through infringement reports, including the penalties imposed and fines collected by virtue of the Labour Law and the legal provisions to which they relate.***

*Articles 5(a), 9 and 13. Labour inspection in the area of OSH.* The Committee previously noted that, pursuant to section 100 of the Labour Law, inspectors have the authority to prepare an urgent report, to be referred to the Minister, if they detect an imminent danger in the workplace. These reports will result in the Minister issuing a decision of partial or total closure until the hazard is removed. It requested information on the number of such reports issued, as well as on the number of occupational accidents, including fatal occupational accidents, and the occupation or sector concerned.

The Committee notes the information provided by the Government in response to its previous request that 22,736 OSH inspections were undertaken in 2018, and 22,079 such visits in 2019 (compared with 14,526 such visits in 2016). It notes the information provided on a number of measures taken by the labour inspectorate related to improving OSH, including: (i) the involvement of the labour inspectorate in the development of a national OSH policy, which will cover data analysis and collection; (ii) preventative activities undertaken by the OSH Department of the labour inspectorate to address heat stress, including targeted inspections on hours of work during the summer; (iii) awareness-raising workshops and an OSH conference to celebrate national OSH day; and (iv) further training for inspectors on OSH issues. The Government indicates that the construction sector remains a priority, and that in the context of the Memorandum of Understanding with Building and Wood Workers' International (BWI), 13 joint inspections were carried out. The Committee notes the information in the 2019 annual labour inspection report that there were 117 fatal occupational accidents in 2019 (compared with117 in 2017 and 123 in 2018), and it observes that the statistics provided on accidents in the annual labour inspection report are not disaggregated by occupation or sector. It also notes an absence of information on the implementation in practice of closure decisions pursuant to section 100 of the Labour Law, and notes the information in the Assessment of the Qatar Labour Inspection System that the approval process from the Minister to halt activities usually takes two to three days.

The Committee further notes the information provided concerning the implementation of the National Action Plan on Heat Stress between June and August 2020 by the OSH Unit. This included an inspection campaign which resulted in the closure of 263 work sites for violations of the Ministerial Decree on heat stress and working hours. In addition, the Committee notes the Government's indication that it has strengthened the monitoring of workers' accommodation with a view to protecting their health and safety. In this respect, the Committee notes that in 2020 the Labour Law was amended to add specifically that housing provided for workers by employers must meet the conditions and specifications in the relevant Ministerial Decision (Ministerial Order No. 18 of 2014 Setting the Conditions and Specifications of Workers' Accommodations) (section 106bis) and to establish applicable penalties for non-compliance (section 145bis). ***The Committee urges the Government to continue taking immediate and time-bound measures to address the number of fatal occupational accidents, including further measures to strengthen the capacity of labour inspectors with respect to the monitoring of OSH, particularly in the construction sector. The Committee requests the Government to continue to provide information on the number of occupational accidents, including fatal occupational accidents, and to ensure that this information is disaggregated by occupation or sector. It also requests the Government to continue to provide information on the number and type of OSH inspection visits undertaken and on measures taken to enforce the legislation on heat stress. It requests the Government to provide information on the number of violations detected, the number of infringement reports issued and, in particular, the information previously requested concerning the follow-up given by the judicial authorities to such infringement reports, as well as information on the application of sections 106bis and 145bis of the Labour Law. It further requests the Government to continue to provide information on the joint inspections undertaken with the BWI, including the modalities of these inspections and how the targets of these inspections are selected. Lastly, the Committee requests the Government to provide further detailed information on the implementation in practice by labour inspectors of the power to make orders requiring measures with immediate executory force in the event of imminent danger to the health or safety of the workers, indicating the number of urgent reports and closure decisions issued under section 100 of the Labour Law, and separately under the Ministerial Decree on heat stress and working hours, disaggregated by occupation and sector.***

*Articles 7 and 10. Recruitment and training of labour inspectors and the effective discharge of their duties.* The Committee takes due note that one of the focuses of the labour inspection policy is the establishment of a learning and development framework for labour inspectors. In this regard, the Committee notes with ***interest*** the detailed information provided by the Government on the development of a four-year strategic training plan 2019–22 by the labour inspectorate's strategic unit, which includes three training tracks. It also notes the information provided for 2018 on the number of study visits and training courses, their content, and the number of participants. The Committee further notes the Government's indication that it will strengthen the capacity of inspectors in the preparation and writing of reports, and concerning the issuance of infringement reports. In addition, the Committee notes the information in the annual labour inspection report that in 2019, 200 inspectors received training on inspection skills, and 196 received training on labour legislation. It further notes the Government's indication in its supplementary report that the implementation of the strategic training plan was temporarily suspended due to the COVID-19 pandemic, but resumed with remote training on forced labour in July 2020 and on occupational safety and health in October 2020.

In addition, it notes the Government's indication, in response to the Committee's previous request on recruitment, that it plans to develop specific standards, qualifications and requirements for newly recruited inspectors, and that new inspectors will follow a specialized introductory training track. Lastly, the Committee notes the information in the 2019 annual labour inspection report that there are four interpreters who work with inspectors. It notes in this respect the statement in the Assessment of the Qatar Labour Inspection System that the number of interpreters working with the inspectorate should be increased. ***The Committee requests the Government to continue to pursue its efforts to ensure that inspectors receive adequate training for the performance of their duties. In this respect, it requests the Government to continue to provide information on the implementation of the strategic training plan 2019–22, specifying the number of labour inspectors that received training, the duration of such training, the subjects covered, and whether it was induction or continuous training. It requests the Government to continue to provide information on its planned development of standards for the recruitment of inspectors, as well as the introductory training provided to new inspectors. The Committee further requests the Government to continue to provide information on measures taken to ensure the recruitment of labour inspectors and of interpreters able to speak the languages of migrant workers, and to indicate the different languages for which the interpreters provide assistance.***

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

## Romania

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1975)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

*Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129.* 1. *Additional duties entrusted to labour inspectors related to immigration.* The Committee previously noted that, in accordance with the Regulation on the organization and functioning of the labour inspectorate (approved by Government Decision No. 488/2017), labour inspectors are entrusted with supervising the employment of migrant workers (section 12(1)B(i)).

The Committee notes the Government's reference in its report to Ordinance No. 25/2014 which provides that on the employment and secondment of foreigners, employers who employ migrant workers without a work permit shall pay the overdue remuneration to the workers concerned, as well as all relevant taxes, fees and social security contributions as if the workers concerned had the appropriate permit, including to those who have returned to their home country (section 38(1) and (2)). Moreover, employers bear liability, including joint and several liability, to any subcontractors for overdue wages for the work performed by migrant workers in an irregular situation (section 38(4)). The Committee also notes that a migrant worker found to be carrying out work without a permit shall be informed in writing in both Romanian and English, by the General Inspectorate for Immigration or, as the case maybe, by labour inspectors of the territorial labour inspectorates, regarding their rights to the recovery of outstanding remuneration, before the execution of a possible obligation to return. The Committee further notes that, according to the information of the 2019 annual report on labour inspection activities (Annual Report), 1,302 controls were carried out regarding compliance with relevant provisions of Ordinance No. 25/2014, of which 667 were conducted jointly with the General Inspectorate for Immigration; 69 sanctions were applied, including 55 orders of fines worth 1,928,000 Romanian lei (RON) (US$464,500) and 14 warnings; and 135 measures were ordered to remedy the non-conformities found.

The Committee observes that, although Ordinance No. 25/2014 provides for the reinstitution of the statutory rights of migrant workers in an irregular situation, the relevant information in the 2019 Annual Report does not indicate how these provisions are applied by the labour inspectors. ***The Committee requests the Government to take specific measures to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors to ensure the protection of workers in accordance with labour inspectors' primary duties as set forth in Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129. Noting the information provided in the annual report on the application of Ordinance No. 25/2014, the Committee requests the Government to provide information on specific measures undertaken by the inspectorate to ensure the enforcement of the rights of migrant workers, including those in an irregular situation. In addition, the Committee requests the Government to provide information on the number of cases in which these workers have been granted their due rights, such as the payment of outstanding wages or social security benefits, disaggregated based on controls carried out by the labour inspectorate alone and controls conducted jointly with the General Inspectorate for Immigration. The Committee further requests the Government to provide information on the number of cases in which migrant workers were deported following the control activities of labour inspectors, again disaggregated based on controls carried out by the labour inspectorate alone and controls conducted jointly with the General Inspectorate for Immigration.***

2. *Control of undeclared work.* The Committee notes that, pursuant to section 12(1)B of the Regulation on the organization and functioning of the labour inspectorate, the labour inspectorate identifies cases of undeclared work, and notifies, as required, the criminal investigation bodies (clause b); ascertains whether the activity being performed constitutes a labour relationship but performed on the basis of another type of contract (clause d); and orders the conclusion of individual employment contracts and the registration of workers concerned in the general register as employees (clause e). The Committee also notes that, according to the information in the 2019 Annual Report, 67,632 controls were performed in this regard and 8,551 persons were found engaged in undeclared work, including 5,942 persons performing work without an employment contract. Moreover, 4,793 measures were ordered to correct the non-conformities. ***The Committee requests the Government to provide information on the definition of undeclared work in national legislation, as well as information on specific measures ordered to correct the non-conformities. It requests the Government to continue to provide information on the work of the labour inspectorate with respect to undeclared work, including the number of persons found engaged in undeclared work, the number of cases in which the labour inspectorate orders the conclusion of an employment contract, as well as the action taken by the inspectorate with respect to those workers where no employment contract is subsequently concluded.***

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

## Russian Federation

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1998)

The Committee notes the observations of the Confederation of Labour of Russia (KTR), received on 30 September 2020. The Committee notes that the KTR refers to constraints on the work of the state labour inspectorate in the context of the pandemic, including the state labour inspectorate's alleged refusal to respond to workers' complaints submitted during the pandemic, and an increase in labour rights violations. The Committee also notes that the KTR raises concerns related to the functioning of the labour inspection system, including: (i) the insufficient number of state inspectors in relation to their expanding duties and their workload; (ii) labour inspectors' conditions of service compared with other public servants of federal authorities operating at the regional level; (iii) existing restrictions on the powers of labour inspectors, including on the scope of inspections, and their practical implications; and (iv) insufficient information in the Reports on the Work of the State Labour Inspectorates. ***The Committee requests the Government to provide its comments in response to these serious allegations.***

*Legislative developments.* The Committee notes the observations of the KTR indicating that new requirements for conducting inspections will be introduced by Federal Act No. 248-FZ of 31 July 2020 on State Oversight (Supervision) and Municipal Oversight in the Russian Federation, which enters into force on 1 July 2021 (Federal Act No. 248-FZ). The Committee notes that, according to the KTR, this Act also contains potential restrictions on the powers of labour inspectors. ***The Committee requests the Government to provide its comments in respect of the KTR's observations. It also requests the Government to provide a copy of Federal Act No. 248-FZ.***

Not having received other supplementary information, the Committee reiterates its comments adopted in 2019 and reproduced below.

The Committee notes the observations made by the Confederation of Labour of Russia (KTR), received on 26 September 2019. ***The Committee requests the Government to provide its comments in this respect.***

*Articles 3(1), 6, 10 and 16 of the Convention. Number of labour inspectors and coverage of workplaces by labour inspection visits.* In its previous comments, the Committee observed that the number of labour inspectors had continuously decreased over a number of years from 2,680 to 2,102 between 2012 and 2016. It also noted from the 2016 report of the Federal Service of Labour and Employment (Rostrud) that the number of labour inspectors was insufficient to achieve sufficient coverage of workplaces by labour inspection visits, which often resulted in the verification and control of documents from the offices of the Rostrud rather than the conduct of actual labour inspection visits in workplaces. The Committee notes with ***concern*** from the information provided by the Government in its report that the actual number of labour inspectors continued to decrease to 1,835 inspectors in 2018. The Committee notes from the 2018 report of the Rostrud that the turnover of staff affects the efficiency of labour inspection activities. ***The Committee urges the Government to take the necessary measures to guarantee the recruitment of an adequate number of labour inspectors to ensure that workplaces are inspected as often and as thoroughly as is necessary to enable the effective application of the relevant legal provisions. It requests the Government to continue to provide information on the number of labour inspectors. The Committee also requests information on the conditions of service of labour inspectors (including salary, benefits, and career prospects) in comparison to public servants exercising similar functions within other government services (such as tax inspectors and the police) as well as on the reasons for the high attrition rate of labour inspectors.***

*Articles 7, 17 and 18. Enforcement of labour law provisions.* In its previous comment, the Committee noted a disparity between the number of cases reported by the labour inspectorate, the number of investigations initiated and the number of convictions. It noted the Government's indication that criminal cases were often not pursued as criminal intent could not be established. With respect to administrative cases, the Committee noted the Government's indication that they were sometimes not pursued due to the lack or incomplete nature of documents in non-compliance reports prepared by the labour inspectorate and that decisions on the closure of administrative cases were often communicated too late for the labour inspectorate to submit appeals within the prescribed time limits.

The Committee notes that, based on the information provided by the Government, there is still a significant discrepancy between the number of files sent to the prosecutor's office by the federal labour inspectorate (7,580) and the number of criminal cases instituted (518), and that the Government's report is silent on the number of actual convictions. The Committee also notes that there have been a significant number of cancellations of acts of inspections, orders, decrees, conclusions and other decisions of labour inspectors by the judicial authorities in 2018 (1,206). ***The Committee once again requests the Government to take the necessary measures to ensure the effective enforcement of the legal provisions enforceable by labour inspectors. It once again requests the Government to provide information on the concrete measures taken to address the deficiencies identified, such as training for labour inspectors on the establishment and completion of non-compliance reports, including the collection of the necessary evidence; the improvement of communication and coordination activities with the judiciary on the required evidence to establish and effectively prosecute labour law violations, as well as the need for timely communication of the outcome of cases to the labour inspectorate. The Committee requests the Government to provide concrete statistics on the administrative and criminal cases reported by the labour inspectorate, including the relevant legal provisions, the investigations and prosecutions initiated, and the penalties imposed as a result. The Committee also requests information on the reasons for the significant number of cancellations of the decisions taken by labour inspectors.***

*Articles 12 and 16. Labour inspection powers and prerogatives.* In its previous comment, the Committee noted that section 357 of the Labour Code only gives labour inspectors the power to interview employers (and not workers) and that Federal Law No. 294-FZ, the Labour Code and Regulation No. 875 provide for numerous restrictions on the powers of labour inspectors, including the free initiative of labour inspectors to undertake inspections without prior notice (sections 9(12) and 10(16) of Law No. 294-FZ), and the free access of labour inspectors to workplaces (without an order from a higher authority) at any hour of the day or night (sections 10(5) and 18(4) of Law No. 294-FZ). It also noted limitations with regard to the grounds on which unscheduled inspection visits may be undertaken (section 360 of the Labour Code, section 10(2) of Law No. 294-FZ and section 10 of Regulation No. 875). The Committee further noted that pursuant to section 19(6)(1) and (2) of the Code of Administrative Offenses, labour inspectors may incur administrative liability where they fail to observe certain of these restrictions, for example where they undertake labour inspections on grounds other than those permitted in law. It urged the Government to take the necessary measures to bring these legislative Acts into compliance with *Articles 12* and *16* of the Convention.

The Committee notes the Government's reference to the introduction of a risk-based approach in the work of the labour inspection services. In this respect, it notes that resolution No. 197 of February 2017 on the introduction of changes to certain acts of the Russian Federation, provides that depending on the assessment of risks, planned inspections may not be carried out more often than: (i) once every two years for workplaces considered to be high-risk; (ii) once every three years for workplaces considered to have a

significant risk; (iii) once every five years for workplaces considered to have medium risk; and (iv) once in six years for workplaces to be of moderate risk. Moreover, for workplaces considered to have a low level of risk, planned inspections are not permitted. In this respect, the Committee notes that pursuant to the amendments introduced by Federal Law No. 480-FZ of 25 December 2018 to the Federal Law No. 294-FZ, inspections cannot be scheduled for low-risk small and medium enterprises. The Committee also notes that in 2018, 37 cases were brought under section 19(6)(1) against officials of the state labour inspectorates for violating the requirements regarding the procedure for state supervision. ***Recalling and emphasizing the importance of fully empowering labour inspectors to make visits without previous notice in order to guarantee effective supervision, the Committee once again urges the Government to take the necessary measures to bring the national legislation into conformity with Articles 12 and 16 of the Convention. Particularly, it urges the Government to ensure that labour inspectors are empowered to: (i) make visits without previous notice, in line with Article 12(1)(a) and (b) of the Convention; (ii) to interrogate both employers and staff, in accordance with Article 12(1)(c)(i); and (iii) to allow for the undertaking of labour inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, in accordance with Article 16. The Committee also requests the Government to provide information on the impact of the risk-based inspection system on the coverage of workplaces by labour inspection. In this regard, it requests that the Government provide statistics on the number of labour inspections undertaken in each year since the implementation of this system, indicating the number of inspections in small, medium-sized and large enterprises. The Committee requests the Government to provide further information on the cases brought under section 19(6)(1) of the Code on Administrative Offenses, indicating the requirements of the legislation on state control that were violated, particularly specifying violations related to undertaking labour inspections on grounds other than those permitted in law, and any penalties assessed against inspectors based on such violations.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Saint Vincent and the Grenadines

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1998)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2010)

In order to provide a comprehensive view of issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

*Articles 3(2), 10, 16, 17 and 18 of Convention No. 81 and Articles 6(3), 14, 21, 22 and 24 of Convention No. 129. Additional functions assigned to labour inspectors. Number of inspectors, number of inspection visits and enforcement.* With regard to its previous comment regarding the limited staff available at the Department of Labour to discharge of the duties of the inspectorate, the Committee notes the Government's indication in its report that the situation remains the same due to national budgetary constraints and the relatively high rate of turnover for labour officers during the last five years. The Committee further notes that there are currently five officers who act as labour inspectors, but that they also perform other duties beside inspections. However, the Government states that a number of occupational safety and health (OSH) inspectors will be recruited following the promulgation of the OSH Act.

The Committee notes that 41 inspection visits were conducted in 2019 and 12 more visits between January and August 2020. In 2019, these inspection visits were conducted in shops, workplaces of professionals, hotels, industrial workplaces, in the workplaces of domestic workers and security workers. No inspection visits were conducted in the agricultural sector that year. It notes in this respect the Government's indication that there has been a significant decline in the number of workers in the agricultural sector over the last 15 years.

The Committee recalls that, in accordance with *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129, any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties, as defined in *Article 3(1)* of Convention No. 81 and *Article 6(1)* of Convention No. 129. ***Taking note of the national budgetary constraints, the Committee requests the Government to provide information on the measures taken or envisaged to ensure that the labour inspection services have at their disposal an adequate number of labour inspectors to enable them to effectively carry out their duties and that workplaces are inspected as often and as thoroughly as is necessary. In this respect, it requests the Government to continue to provide information on the number of labour inspectors (including OSH inspectors) and the number of inspection visits undertaken, including the number of inspection visits undertaken in the agricultural sector. It once again requests the Government to provide information on the results of those inspections, such as the number of violations detected and penalties imposed. Lastly, the Committee requests the Government***

***to specify all the other functions carried out by the officials entrusted with labour inspection functions and to provide information on the amount of time spent by those officials on such other functions.***

*Article 7 of Convention No. 81 and Article 9 of Convention No. 129. Adequate training of labour inspectors.* Following its previous comment, the Committee notes the Government's indication that no training has been provided to labour inspectors since 2011 and that the majority of officers who have been trained are no longer employed by the Department of Labour. The Government states that new officers were transferred from other government Ministries or Departments and received only on-the-job training from the more experienced officers remaining in the Department. ***The Committee requests the Government to intensify its efforts to ensure that all labour inspectors receive appropriate training for the discharge of their duties and to provide information on the content, frequency and duration of any training given to new or recently transferred inspectors, as well as similar information with respect to training for more experienced inspectors.***

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



## Senegal

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

*Article 13(2)(b) of the Convention. Measures with immediate executory force in regard to occupational safety and health.* The Committee previously noted that Decree No. 2006-1255 of 15 November 2006 limits the application of measures with immediate executory force in the event of imminent danger to health or safety of workers to situations arising from failure to comply with occupational safety and health laws or regulations (section 18), except in the building sector, where no violation of the legislation is required for an order of cessation of work (sections 19 and 20). The Government indicated that these limitations were being considered in the context of the reflections concerning the strengthening of the legal powers of labour inspectors. The Committee notes the Government's statement in its report that the draft text strengthening the legal powers of labour inspectors, which necessitates the revision of a number of provisions of the national labour legislation, is under way and that the various actors concerned are concerting thereon. ***The Committee requests the Government to pursue its efforts to take the necessary measures to bring its legislation and practice into full conformity with Article 13(2)(b) of the Convention as soon as possible, allowing inspectors to impose measures with immediate executory force in the event of imminent danger to the health or safety of the workers in all industrial and commercial establishments, without the obligation to determine whether or not there is violation of the legislative or regulatory provisions.***

*Articles 17 and 18. Effective enforcement of adequate penalties for violations of legal provisions.* Further to its previous comments, the Committee notes the statistics provided by the Government, and also that the numbers of compliance letters (556 in 2015; 1,062 in 2016; 1,069 in 2017; and 1,429 in 2018) and official notices (24 in 2015; 54 in 2016 and 56 in 2018) issued by labour inspectors requiring employers to conform with the legislation, have increased, while more severe measures, such as reports of non-compliance, have greatly reduced (58 in 2014; 2 in 2015; 0 in 2017; and 1 in 2018. ***The Committee requests the Government to provide information on the reasons for the reduced number of non-compliance reports issued. It also requests the Government to provide specific information on the number of documents submitted annually by the labour inspectorate to the prosecutors and judges, the number of cases where proceedings have been filed or legal action engaged, and the outcomes thereof.***

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

## Serbia

### Labour Inspection Convention, 1947 (No. 81) (ratification: 2000)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2000)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

*Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129. Free entry of labour inspectors to workplaces without prior notice.* The Committee previously noted restrictions on the powers of inspectors in the Law on Inspection Oversight, with regard to: (i) the ability of labour inspectors to undertake inspection visits without previous notice (sections 16, 17, 49 and 60); and (ii) the scope of inspections (section 16). The Committee noted the 2019 conclusions of the Committee on the Application of Standards (CAS) on the application of Conventions Nos 81 and 129 by Serbia, which called on the Government to amend sections 16, 17, 49 and 60 of the Law on Inspection Oversight without delay; and undertake the legislative reforms in consultation with the social partners as well as to ensure effective collaboration between the labour inspectorate and the social partners. In this respect, the Committee

noted the Government's reference to consultations held by the Ministry of Labour, Employment, Veteran and Social Affairs with the Ministry of Public Administration and Local Self-Government, which issued the Law on Inspection Oversight, and a tripartite workshop planned for 2020.

The Committee welcomes the Government's indication in its report that a tripartite workshop took place in February 2020 in Belgrade to follow-up on the conclusions of the CAS, attended by the representatives of the Office of the Prime Minister of Serbia, the Ministry of Labour, Employment, Veteran and Social Policy, the Ministry of Public Administration and Local Self-Government, the labour inspectorate, the Occupational Safety and Health Directorate, the Serbian Association of Employers (SAE), the Trade Union Confederation "Nezavisnost", and the Confederation of Autonomous Trade Unions of Serbia (CATUS), and including the participation of the ILO. The Committee notes the Government's reference to the conclusions of the workshop, and notes with ***interest*** that among the areas of consensus emerging from the workshop to address the conclusions of the CAS was agreement to establish a tripartite working group to determine the specific form the amendments should take, including whether to amend the Law on Inspection Oversight only, or to develop a specific labour inspection law. The Committee also notes that, according to the Government's supplementary information under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Ministry of Labour, Employment, Veteran and Social Affairs informed the Social and Economic Council on 4 March 2020 of the results of the tripartite workshop on Conventions Nos 81 and 129. The Committee further notes that section 60(1) of the Law on Inspection Oversight, which provided the possibility of fines on labour inspectors in case of failure to notify the entity subject to oversight of an upcoming instance of inspection oversight in writing, has been amended and deleted. ***Taking due note of this information, the Committee requests the Government to continue to provide information on the measures taken to amend the Law on Inspection Oversight, including the establishment of the tripartite working group and the outcomes of its meetings, and on any other steps taken to ensure the appropriate follow-up to the conclusions of the CAS, in consultation with the social partners. The Committee also requests the Government to continue to provide information on the application in practice of Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129, including statistics on the number and nature of inspections undertaken without previous notice (such as in response to occupational accidents, complaints or serious violations).***

*Articles 3(1)(a) and (b), 7, 10 and 16 of Convention No. 81 and Articles 6(1)(a) and (b), 9, 14 and 21 of Convention No. 129. Adequate number of qualified labour inspectors and inspection visits to ensure the effective application of the legal provisions*. The Committee previously noted the decreasing number of labour inspectors since 2016, as well as trade unions' concerns regarding the insufficient numbers of inspectors and their lack of appropriate conditions and means of work. In this respect, the Committee requested information on measures taken by the Government concerning the implementation of its proposed three-year action plan to hire civil servants carrying out inspections, and of the recommendations of a 2019 analysis of inspection services.

The Committee notes the Government's indication that the labour inspectorate has 229 labour inspectors for 409,868 registered business entities as of May 2020 (a decrease from 240 labour inspectors for 416,815 registered business entities in 2019), and that the Government states that the labour inspectorate is competent to control those entities' compliance with labour legislation. The Committee also notes the Government's reference to the adoption, by Decision of the Government, of the Three-year Action Plan for the employment of civil servants carrying out inspections under the jurisdiction of national inspections, according to which it is necessary to employ 13 additional labour inspectors in 2020, and 27 more additional labour inspectors in 2021. The Government also indicates that there are currently 38 vacancies for labour inspector posts. The Committee further notes the Government's indication that all labour inspectors are equipped with laptops and modems for mobile internet, but that the labour inspectorate is poorly equipped with scanners and printers, and needs IT equipment, including new desktop computers. ***The Committee requests the Government to provide further information on the implementation of the Three-year Action Plan for the employment of civil servants carrying out inspections under the jurisdiction of national inspections, indicating the specific number of additional labour inspectors hired. The Committee also requests the Government to take the necessary measures to ensure that the labour inspectorate offices are suitably equipped. In this respect, it requests the Government to indicate any measures taken or envisaged to improve the material means placed at the disposal of labour inspectors and to address the deficiencies in IT equipment identified.***

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

## Sierra Leone

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1961)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 6 and 7 of the Convention. Recruitment and training of labour inspectors and independence of labour inspectors.* The Committee notes the information in the Government's report that no training opportunities have been provided to labour inspectors in terms of technical or specialized areas, although initial induction training is offered for labour inspectors within the various units in the Ministry of Labour and Social Security. The Committee also notes the Government's indication that, with respect to qualifications of the labour inspection staff, one of the factors considered in recruitment is political affiliation. The Committee recalls that pursuant to *Article 6* of the Convention, labour inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of improper external influences and, pursuant to *Article 7*, they shall be recruited with sole regard to their qualifications for the performance of their duties. ***The Committee requests the Government to take necessary measures to ensure that labour inspectors are recruited with sole regard to their qualifications for the performance of their duties, in accordance with Article 7 of the Convention. Taking due note of the resource constraints, the Committee expresses the hope that the Government will be in a position to make the necessary arrangements to implement an ongoing training programme for labour inspectors, and it requests the Government to provide information on any developments in this respect.***

*Article 12(1)(a). Unannounced visits and free access to workplaces liable to inspection.* The Committee notes the Government's indication in its report that owners of workplaces are notified of formal inspection visits. In this respect, the Committee recalls that under *Article 12* of the Convention, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice any workplace liable to inspection. ***The Committee requests the Government to take the necessary measures, including in the context of the ongoing labour law reform process, to ensure that labour inspectors are empowered, in law and practice, to enter freely and without previous notice any workplace liable to inspection.***

*Article 18. Adequate penalties.* The Committee notes the Government's reference to the Factories Act, 1974 concerning applicable fines or penalties, and it observes in this respect that the fines established are quite low. ***The Committee requests the Government to take the necessary measures in the context of the ongoing labour law reform, to ensure the establishment of adequate penalties for the legal provisions enforceable by labour inspectors.***

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

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

## Slovenia

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1992)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1992)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Legislation.* The Committee previously noted the legislative reforms regarding the Labour Inspection Act (LIA) of 2014 and requested the Government to indicate the extent to which labour inspectors are bound by the general principles established under the Inspections Act (IA) as well as how the overlapping or conflicting provisions under the IA and the LIA are applied in practice to the daily work of labour inspectors.

The Committee notes the Government's reference in its report to section 3 of the LIA providing that unless otherwise provided by the LIA, the performance of inspection and inspectors shall be subject to the provisions of the IA governing inspection, the provisions governing the general administrative procedure and the provisions of specific regulations governing the supervision of individual inspection services that operate within the inspectorate. The Government states in this respect that inspectors carry out their work pursuant to the LIA, but that for issues not regulated in the LIA, they carry out inspections pursuant to the IA. In this respect, the Committee notes that qualifications of inspectors, the initiation of inspections, additional powers including seizure of documents, inspection records, and entities liable to inspection are covered by the LIA (sections 9–11 and 13–15), while inspection procedures and access to workplaces are regulated by the IA. The Committee takes note of the information provided by the Government.

*Article 3(1)(a), (b) and (2) of Convention No. 81 and Article 6(1)(a), (b) and (3) of Convention No. 129. Functions entrusted to labour inspectors. Additional duties entrusted to labour inspectors related to immigration.* The Committee previously noted with concern that labour inspectors can impose fines on migrant workers for the performance of work that violates the Employment, Self-employment and Work of Aliens Act (ESWAA) (sections 51, 60, 61, 63, and 66), and are obliged to inform the police authority when its supervision activities lead to the suspicion of illegal residence of migrant workers (section 44(4)). It requested the Government to take the necessary measures to ensure that the control duties by the labour inspectorate under the ESWAA do not prejudice the exercise of its primary duty to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers. It also requested

information on the manner in which the labour inspectorate ensure the enforcement of employers' obligations with regard to the rights of migrant workers.

The Committee notes the Government's indication that sanctions for violations of the ESWAA do not affect the protection of labour rights of migrant workers or their right to suitable working conditions. In accordance with section 19(1)-2 of the LIA, inspectors may prohibit the worker concerned from performing work until the correction of the irregularity, if during an inspection they find that the employer has enabled a foreigner or a person without citizenship to work contrary to regulations governing the employment of foreigners. According to the 2019 annual report on inspection activities (Annual Report), the inspectors found 49 infringements in 2019, compared to 29 in 2018. The Government also states that the labour inspectorate imposed sanctions on migrant workers due to such violations in a few cases in 2018 and 2019. The Government further indicates that a migrant worker whose employment contract is determined to be null and void in accordance with section 23 of the Employment Relationship Act (ERA) only enjoys the protection of labour rights if they prove the existence of an employment relationship in court.

The Committee recalls that, in accordance with *Article 3(1)* and *(2)* of Convention No. 81 and *Article 6(1)* and *(3)* of Convention No. 129, the function of the system of labour inspection is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and that any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties. It also recalls that neither Convention No. 81 nor Convention No. 129 contain any provision suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status (paragraph 77, General Survey of 2006, *Labour inspection*). Referring to paragraph 452 of its General Survey of 2017, *Working together to promote a safe and healthy working environment*, the Committee further indicates that workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as the loss of their job or expulsion from the country. ***The Committee requests the Government to take measures to ensure that the duties entrusted to labour inspectors do not interfere with the fundamental objective of securing the protection of workers in accordance with the primary duties set out in Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129. It requests the Government to provide further specific information on the number of cases in which sanctions were imposed on migrant workers, the violations concerned and the sanctions imposed. The Committee once again requests the Government to provide information on the manner in which the labour inspection services ensure the enforcement of employers' obligations with regard to the rights of migrant workers, in particular those in an irregular situation or without an employment contract, including specific information as to the payment of remunerations and any other benefits owed for the work they performed.***

*Articles 6 and 10 of Convention No. 81 and Articles 8 and 14 of Convention No. 129. Number of labour inspectors and their conditions of service. Stability and independence of labour inspectors.* The Committee previously noted the continuous decline in the number of labour inspectors and their heavy workload, as well as issues related to external pressure facing inspectors from both complainants and employers, as documented in the Annual Report for 2017. It requested the Government to take measures to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate, and to provide information on measures taken to address the pressure facing labour inspectors.

The Committee notes the Government's information that the number of approved posts at the labour inspectorate increased from 106 in 2017 to 121 in 2019, and that recruitment procedures are under way. According to the 2019 Annual Report, there are 120 employees at the labour inspectorate, including 91 inspectors (up from 81 in 2018) and the number of business entities increased from 215,354 in 2018 to 220,236 in 2019. The Annual Report further states that inspectors, in particular those in charge of monitoring working conditions and employment relationships and social affairs, still face difficulties to promptly process all requests. In 2019, the labour inspectorate received 7,215 complaints, of which about 80 per cent fall into the competence of inspectors monitoring working conditions and employment relationships. Information in the 2019 Annual Report also indicates that the number of these inspectors has increased in recent years in response to their heavy workload, but that there has been a decrease in the number of occupational safety and health (OSH) inspectors (from 41 in 2008 to 31 in 2019). In this regard, the Annual Report states that measures will be taken to reinforce OSH inspections.

The Committee also notes the Government's indication that a risk assessment undertaken of the work of the inspectorate indicated that nearly all employees of the labour inspectorate, and particularly inspectors, are exposed to the risk of third-party violence, due to the nature of their work. In order to address this, the labour inspectorate has taken measures to prevent unauthorized access to its offices, drafted instructions outlining measures to reduce such violence, and organized various lectures and workshops on stress management, communication in difficult situations and other relevant topics. Concerning protection against aggression, certain inspections are carried out by two inspectors or together with other supervisory authorities, and inspectors may also request that police officers be

present at the inspection. The Government also indicates that, in addition to the provisions on the independence of inspectors provided for by the IA and the LIA, certain inspections are carried out by inspectors from the head office instead of local units if it is assessed necessary to prevent the external influence from local stakeholders. The Committee also notes that, however, the 2019 Annual Report states that labour inspectors continue to be overwhelmed with the amount of assigned cases and face a significant level of external pressure from both complainants and employers in the form of insults, misconduct and aggressiveness concerning matters beyond their mandate. ***While taking note of the increase in the number of inspectors from 2017 to 2019, the Committee requests the Government to reinforce its efforts to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate, regarding both inspectors monitoring working conditions and employment relationships and OSH inspectors. It also requests the Government to continue to provide information on the measures taken in this respect. In addition, the Committee urges the Government to strengthen its efforts to address the issues raised in the 2019 Annual Report related to violence, harassment and other external pressure facing labour inspectors, including with a view to ensuring their independence from improper external influences.***

*Article 12(1)(b) of Convention No. 81 and Article 16(1)(b) of Convention No. 129. Access to workplaces liable to inspection.* The Committee previously noted that pursuant to section 21 of the IA regarding business and other premises not belonging to the person liable, persons owning or possessing business premises, production premises or other premises or land can refuse inspectors' free access under certain conditions. The Committee notes the Government's explanation in response to its request that an inspection may only be denied in the exceptional cases provided for by section 21 of the IA. The Government also indicates that, if a person unjustifiably refuses to allow an inspection, they may be subject to the same measures as a witness who refuses to testify, and the inspection may be carried out against their will. With reference to its comments above on the LIA and the IA, the Committee notes that the LIA does not contain provisions relating to access to workplaces liable to inspection. The Committee recalls that, by virtue of *Article 12(1)(b)* of Convention No.81 and *Article 16(1)(b)* of Convention No.129, labour inspectors should be empowered to enter by day premises which they may have reasonable cause to believe to be liable to inspection in order to efficiently ensure workers' protection, and that these Articles do not allow for any restrictions. With reference to its General Survey of 2006, *Labour Inspection*, paragraph 266, the Committee also recalls that restrictions placed in law or in practice on inspectors' right of entry into workplaces can only stand in the way of achieving the objectives of labour inspection as set out in the Convention. ***The Committee once again urges the Government to take measures to bring the national legislation into conformity with Article 12 of Convention No. 81 and Article 16 of Convention No. 129 to ensure that that labour inspectors are empowered to enter by day premises which they may have reasonable cause to believe to be liable to inspection. In the meantime, it requests the Government to provide detailed information on the implementation of section 21 of the IA in practice, indicating the number of times that inspectors have been denied access to workplaces under this section, the reasons given for each denial under one or more of the exceptions provided for in section 21, and the outcome of any proceedings reviewing each denial.***

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

## Sri Lanka

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1956)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes that a representation under article 24 of the Constitution of the ILO was presented to the Governing Body by the Flight Attendants' Union alleging non-observance by Sri Lanka of the Labour Inspection Convention, 1947 (No. 81), and the Protection of Wages Convention, 1949 (No. 95). At its 334th Session (October–November 2018), the Governing Body decided that the representation was receivable and to set up a tripartite committee to examine it (GB.334/INS/14/3). In accordance with its past practice, the Committee has decided to suspend its examination of the application of the Convention, insofar as the effective enforcement of measures taken by labour inspectors to institute proceedings and the impartiality of the labour inspection system are concerned, pending the decision of the Governing Body in respect of the representation.

The Committee notes the observations of the Ceylon Bank Employees' Union (CBEU), the Ceylon Estates Staffs' Union (CESU), the Ceylon Federation of Labour (CFL) and the Ceylon Mercantile Industrial and General Workers Union (CMU) on the application of the Convention, and the Government's reply thereto, both received in 2018.

*Articles 3, 4, 5(a), 16, 20 and 21 of the Convention. Effective functioning of the labour inspection system and reliable statistics to evaluate its effectiveness. Annual reports of the labour inspectorate.* The Committee notes the information provided by the Government in its report for the period ending 31 August 2016, in response to the Committee's previous comments, on the implementation of the Labour Inspection System Application (LISA), and the Government's indication that all labour and occupational safety and health (OSH) inspectors have been trained to implement the system. In this context, the Government stated that from 2017 onwards, it would be possible to provide a comprehensive annual labour inspection report, in accordance with *Articles 20* and *21* of the Convention. The Committee nevertheless notes that the observations of the CBEU, the CESU, the CFL and the CMU take issue with the administration of LISA and its effectiveness in the collection of data, and allege that the system does not systematize the labour inspectorate's work or contribute to the improvement of its quality. In response, the Government states that LISA has been continuously improved since its launch, with newly added modules that should help to speed up related inspections. The Committee takes due note that the 2017 annual report of the Department of Labour contains information on laws and regulations relevant to the work of the inspection service, as well as statistics on the number of labour inspectors, of registered factories, of inspection visits, of court cases filed by labour officers, and of occupational accidents. However, this annual report does not contain statistics on occupational diseases, or statistics of workplaces liable to inspection and the number of workers employed therein, other than factories. ***The Committee requests the Government to continue to publish and transmit to the ILO an annual labour inspection report, in accordance with Article 20 of the Convention. The Committee also requests the Government to take the necessary measures to ensure that this annual report contains complete information on all the subjects listed in Article 21(a)–(g) of the Convention, in particular on: statistics of workplaces liable to inspection and the number of workers employed therein (Article 21(c)); and statistics of occupational diseases (Article 21(g)). The Committee requests the Government to provide information on the measures taken in this regard. In addition, the Committee requests the Government to provide detailed information on the implementation of LISA in practice, including its impact on the effectiveness of the work of the labour inspectorate, both with regard to the number and quality of inspections and the collection of statistics.***

*Articles 3(1)(a) and (b), 9, 13 and 14. Role of the labour inspectorate in the field of OSH. Notification of industrial accidents and cases of occupational disease to the labour inspectorate.* Following its previous comments, the Committee notes the information on the number of inspections visits provided by the Government and in the 2017 annual report of the Department of Labour. The Committee also notes the Government's indication regarding the role of the National Institute of Occupational Safety and Health (NIOSH), which provides continued services to train labour inspectors on OSH issues. In this regard, the Committee notes the observations of the CBEU, the CESU, the CFL and the CMU stating that the NIOSH is poorly resourced in terms of trained staff and equipment. In addition, as regards measures to ensure that the labour inspectorate is informed of industrial accidents and cases of occupational disease, the CBEU, the CESU, the CFL and the CMU allege that there is no proper link between the general labour inspectorate and the OSH inspectorate to allow for: (i) information sharing and recording; and (ii) issues detected by regular labour inspectors to be followed-up on by OSH inspectors. The unions further allege that occupational injuries are very under-reported. In this respect, the Government states that, due to the scope of application of the Factories Ordinance, certain workplaces, such as estates in plantations, can only be inspected by general labour inspectors and not by OSH inspectors. The Committee also notes the Government's indication in its supplementary report that industrial accidents and cases of occupational diseases are regularly reported to the respective divisions, and that the inspecting staff of the Department of Labour (including labour officers, factory-inspecting engineers, specialist factory engineers and medical officers) all receive training with OSH components. The Government states in this regard that when they identify hazardous work environments or unsafe workplaces during inspections, labour officers refer it to the District Factory Engineers Office or to the Occupational Safety Division. ***The Committee requests the Government to provide further information on the measures taken to ensure that there is effective cooperation between general labour inspectors and OSH inspectors, with a view to securing the effective enforcement of the legal provisions relating to OSH. In addition, the Committee requests the Government to indicate the manner in which it is ensured that the labour inspectorate are notified of industrial accidents and cases of occupational disease, in accordance with Article 14 of the Convention, and to provide further information on the application in practice of this provision, including statistics on occupational accidents and diseases notified.***

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

## Tajikistan

### Labour Inspection Convention, 1947 (No. 81) (ratification: 2009)

*Articles 3, 4, 5(b), 6, 8, 10, 11, 13, 17 and 18 of the Convention. Operation of the labour inspection system under the supervision and control of a central authority and duality of inspection functions assumed by state and trade union labour inspectors in this system*. The Committee previously noted that the responsibility

for labour inspection fell within both the State Inspection Service for Labour, Migration and Employment (SILME) of the Ministry of Labour, Migration and Employment, and the inspectorate established by the Federation of Independent Trade Unions, and requested further information on the relationship between the two inspectorates. In this respect, the Committee notes the Government's indication in its report that the trade union inspectorate operates under the direction of national and regional trade union committees, but that trade union inspectors interact closely with labour inspectors from the SILME. The Committee notes the Government's reference to 276 joint inspections undertaken in the period between 2018 and the first half of 2020, and its indication that the Federation of Independent Trade Unions currently has 17 branch committees, dealing with all sectors of the economy, and 28 labour inspectors (a decrease from the 36 trade union inspectors noted in 2018). The Committee nevertheless observes an absence of information regarding its previous requests concerning: (i) the status and conditions of service of labour inspectors in the SILME; and (ii) the funding of the trade union inspectorate. The Committee also notes that, pursuant to the Law on Inspections of Economic Entities No. 1269 (Law No. 1269), adopted in 2015 and subsequently amended (2017, 2019, 2020), a Council for the Coordination of the Activities of Inspection Bodies has been created, with the power to coordinate inspection plans of inspection bodies, to avoid duplication of inspections (sections 5 and 6). ***The Committee requests the Government to provide further information on the relationship between the SILME and the trade union inspectorate, including on the modalities of any arrangements in place to ensure effective cooperation between those two bodies, and on the relationship between both inspectorates and the Council for the Coordination of the Activities of Inspection Bodies. The Committee also requests the Government to provide the laws and regulations governing the status and conditions of service of state labour inspectors and the duties and powers of trade union inspectors, to enable the Committee to make a full assessment, as well as information on state labour inspectors' conditions of service (including remuneration and career prospects) in relation to the conditions applicable to similar categories of public servants and trade union inspectors. In the absence of information in this regard, the Committee once again requests the Government to provide information on the sources of funding for the operation of the trade union labour inspectorate. Finally, the Committee requests the Government to continue to provide information on the numbers of SILME inspectors and trade union inspectors, and the material means at their disposal.***

*Articles 12 and 16. Powers of labour inspectors.* 1. *Moratorium on inspections.* The Committee previously noted with deep concern that, pursuant to Law No. 1505 of 21 February 2018 providing for a moratorium on inspections in industrial workplaces, the provisions in the Code regarding labour inspections would be suspended during the period of application of Law No. 1505. In this respect, the Committee notes with ***deep concern*** that, pursuant to Government Decree No. 990 of January 2018, as amended in 2019, a moratorium on all types of inspections of the activities of business entities in the area of manufacturing has been imposed until 1 January 2021. The Government states that, in 2019, the SILME inspected 2,069 economic entities, including 1,662 scheduled inspections and 375 unscheduled inspections. The Committee notes that the Government also indicates that, during this period, inspections at 818 economic entities were either not implemented or postponed for various reasons, such as their inclusion in the category of industrial facilities, the temporary or permanent halting of activities, or liquidation. In this respect, the Committee recalls its general observation of 2019 on the labour inspection Conventions, expressing concern at reforms that substantially undermine the inherent functioning of labour inspection systems, including moratoria on labour inspections, and urging governments to remove these restrictions, with a view to achieving conformity with Convention No. 81. ***Recalling that any moratorium placed on labour inspection is a serious violation of the Convention, the Committee requests the Government to take all necessary measures to ensure that no further restrictions of this nature will be placed on labour inspection in the future. The Committee requests the Government to provide information on the developments in this regard, and to continue to provide information on the number of inspection visits undertaken by the SILME, disaggregated by type of inspections and by sectors.***

2. *Other restrictions on the powers of labour inspectors.* The Committee previously noted that sections 19 and 348 of the Labour Code require employers to ensure free access of SILME labour inspectors to workplaces, but noted with concern that a number of restrictions on inspections existed in the Law on Inspections of Economic Entities, which applied to the labour inspectorate. In this respect, the Committee notes that the previous Law on Inspections of Economic Entities has been repealed, and notes with ***concern*** that Law No. 1269 appears to contain similar restrictions on the power of inspectors, including with regard to: (i) the frequency of inspections (section 22); (ii) the duration of inspections (section 26); (iii) the ability of labour inspectors to undertake inspection visits without previous notice (sections 16, 19, 21 and 24); and (iv) the scope of inspections (section 25). ***Referring to its general observation of 2019 on the labour inspection Conventions, the Committee once again urges the Government to take the necessary legislative measures to ensure that labour inspectors are empowered to make visits without previous notice, and that they are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions, in conformity with Articles 12 and 16 of the Convention.***

*Article 13. Preventive measures in the event of a danger to the safety and health of workers.* The Committee previously requested the Government to indicate the manner in which state labour inspectors are empowered to take steps with a view to remedying defects observed in plants, layout or working methods, which they may have reasonable cause to believe constitute a threat to the health or safety of workers. In this respect, the Committee notes that section 30 of Law No. 1269, provides for inspectors' ability to make a decision on the temporary suspension of the activities of an economic entity for a maximum three month period and in prescribed circumstances, including due to a threat to life or health. The Government also indicates that, in 2019, inspections revealed 1,663 instances of infringements involving compliance with safety standards. ***The Committee requests the Government to provide further information on the manner in which state labour inspectors are empowered to take steps with a view to remedying defects observed in plants, layout or working methods, which they may have reasonable cause to believe constitute a threat to the health or safety of workers, in accordance with Article 13. Noting the Government's indication regarding 1,663 instances of infringements of occupational safety and health (OSH) standards detected in 2019, the Committee also requests the Government to provide statistics on the application in practice of inspectors' temporary suspension powers under section 30 of Law No. 1269 related to safety and health.***

*Articles 20 and 21. Obligation to publish and communicate an annual report on the work of the labour inspectorate.* The Committee notes with ***regret*** that, while the Government provides statistics regarding labour inspection, it has not communicated an annual report on the activities of the labour inspection services for a number of years. The Committee nevertheless notes the Government's reference to the existence of an OSH information and resource centre, which holds data on labour legislation, OSH rules and regulations and other issues. The Committee further notes that, pursuant to section 37 of Law No. 1269, inspection bodies must submit annual reports to the Council for the Coordination of the Activities of Inspection Bodies. ***The Committee urges the Government to take the necessary measures to ensure that the annual report of the labour inspectorate is published and transmitted to the ILO in the near future, in accordance with Article 20 of the Convention, and that this annual report contains information on all the subjects listed under Article 21.***

In light of the situation described above, the Committee notes with concern that there has been no meaningful progress since the Committee's last examination in 2018 with regard to the significant limitations on the functioning of the labour inspectorate, including the legislative restrictions on the undertaking of inspection visits and the moratorium on inspections in manufacturing, which constitute a serious violation of the Convention.

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

***[The Government is asked to supply full particulars to the Conference at its 109th Session and to reply in full to the present comments in 2021.]***

## Turkey

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the Turkish Confederation of Employers' Associations (TISK), communicated with the Government's report and received on 29 September 2020, and the observations of the Confederation of Public Servants Trade Unions (MEMUR-SEN), communicated with the Government's supplementary report.

*COVID-19 measures.* The Committee notes the Government's indication in its supplementary report that the number of inspections decreased due to COVID-19, but that the labour inspectorate focused instead on the examination of applications for short-time working allowances (unemployment allowances provided following an application to reduce or suspend the employment period). The Government also indicates that labour inspectors informed employers, workers and OSH professionals about occupational safety and health (OSH) measures to protect against COVID-19 in the workplace. ***The Committee requests the Government to continue to provide information on developments in this regard.***

*Articles 3, 5(b), 10 and 16 of the Convention. OSH inspections, including in the mining sector and in relation to subcontracting situations.* The Committee previously noted the concerns of several trade unions relating to OSH inspections, including their insufficient coverage, the widespread noncompliance with OSH requirements and the high incidence of occupational accidents and diseases. In this respect, the Committee notes the statistics provided in the Government's report, including the number of workplaces and workers in the mining sector and in subcontracting situations, of OSH inspections undertaken in such workplaces and of occupational accidents and diseases recorded. The Committee notes that the total number of occupational accidents reported in 2017, 2018, and in the first five months of 2019 remain significant (359,653 in 2017; 430,769 in 2018 and 159,099 in the first five months of 2019) and that the

total number of OSH inspections conducted was 10,804 in 2017, 12,649 in 2018 and 3,088 in all of 2019. The Committee also notes the observations of the International Trade Union Confederation (ITUC) on Conventions Nos 155, 167, 176 and 187, which allege that the number of fatal occupational accidents has increased in 2020, as well as the Government's response that the number of accidents should not be examined in isolation, but should be evaluated over the years, against OSH conditions and the number of employees in the country. The Government indicates that OSH inspections, including in mining, decreased due to COVID-19. ***With regard to occupational accidents, the Committee refers the Government to its detailed comments adopted in 2020 on the OSH Conventions ratified by Turkey. The Committee requests the Government to indicate the reason for the 75 per cent decrease in the number of OSH inspections in 2019, and to continue to provide statistics on the number of OSH inspections conducted and of occupational accidents and diseases registered in workplaces overall, including the mining sector and workplaces with workers in subcontracting situations. In the absence of information in this regard, the Committee once again requests the Government to provide information about arrangements in place to ensure collaboration between officials of the labour inspectorate and employers and workers or their organizations.***

*Articles 5(a), 7(3), 17 and 18. Effective enforcement of laws and regulations providing for sufficiently dissuasive penalties. Effective cooperation between the inspection services and the judicial system.* The Committee takes due note of the statistics provided by the Government concerning the number of inspections conducted and the sanctions imposed in the period 2016–19. Nevertheless, the Committee notes an absence of information on the compliance strategy pursued to address the issue of effective enforcement of dissuasive sanctions, which had been discussed in 2015 by the Committee on the Application of Standards (CAS) of the International Labour Conference on the application of Convention No. 155. The Government indicates that, despite the increase in fines for non-compliance with the Occupational Health and Safety Law No. 6331, as amended by Act No. 6645 in 2015, the amount of administrative penalties applied per inspection during the period 2016–18 has decreased compared to 2014, and the Committee notes from the statistical information in the Government's supplementary report that there was a further decrease from 2018 to 2019. The Committee also observes with ***concern*** that the total number of fines imposed (3,938 in 2016; 3,485 in 2017; 2,637 in 2018; and 470 in 2019) remains low compared to the number of OSH inspections effectuated in the period 2016–19 (14,287 in 2016; 10,804 in 2017 ;12,649 in 2018; and 3,088 in 2019), and the number of enterprises suspended as a result of OSH inspections has substantially declined (820 in 2016; 726 in 2017; 239 in 2018; and 49 in 2019). With regard to effective cooperation between the labour inspection services and the judiciary, the Committee notes that, according to information provided by the ILO Ankara Office, the training programmes provided to labour inspectors and auditors of the Social Security Institution (SSI) in 2018 and 2019 included a component on judicial processes, with the participation of judges from the Ministry of Justice. The Committee also notes the observations of the TISK regarding the participation in ITC–ILO training courses, in February 2020, of 40 labour inspectors and two judges from the Supreme Court and Turkish Academy of Justice. ***The Committee requests the Government to provide further information on the impact of the increase in fines introduced in 2015, particularly on compliance with OSH legislation, and to continue to provide statistics on fines and sanctions imposed, as compared to the number of violations detected. It also requests the Government to provide information on the reason for the more recent decrease in the number of fines imposed as well as for the decrease in the number of penalties applied per inspection. The Committee further requests the Government to continue to take the necessary measures to ensure effective cooperation between the inspection services and the judiciary and to provide information in this regard.***

*Articles 10 and 16. Number of labour inspectors, frequency and thoroughness of labour inspections.* Further to its previous comments, in which it noted a total of 974 labour inspectors, the Committee notes the Government's indication in its supplementary report that, as of August 2020, there were 939 labour inspectors, and 91 Auditors employed in the Directorate of Guidance and Inspection of the Ministry of Family, Labour and Social Services, with plans to hire 80 new Assistant Labour Inspectors. The Committee also notes the statistics provided by the Government concerning the number of OSH and administrative inspections conducted per year for the period 2010–18. With regard to activities undertaken to combat child labour, the Committee welcomes the Government's indications regarding training provided on this subject to labour inspectors and to auditors between 2017 and 2019 and the information provided on the workplaces where it was determined that children had been employed. The Committee also notes that, according to the Government's supplementary report, some activities regarding child labour have been postponed due to the COVID-19 pandemic.

With regard to its request on ensuring that the number of labour inspectors and inspections is sufficient to secure the effective application of the legal provisions, the Committee notes the observations of the TISK, which consider that the number of labour inspectors has not sufficiently increased in the face of a rising number of workers and workplaces. According to the TISK, the determination of priority sectors and enterprises, with different inspection plans according to enterprises' type and size, would also be necessary to make a more efficient use of resources. The MEMUR-SEN also considers that due to

insufficient staff and insufficient amount of equipment, labour inspections cannot be carried out adequately. ***The Committee requests the Government to provide its comments in this regard. Observing that the number of labour inspectors has remained stable since its previous comments, the Committee also requests the Government to indicate the measures taken to ensure that the number of labour inspectors is sufficient to secure the effective discharge of their duties, and to ensure that workplaces are inspected as often and as thoroughly as is necessary to ensure the application of the relevant provisions. In addition, the Committee requests the Government to provide further information on the role of auditors in the labour inspection system, including their functions and powers. With respect to the monitoring of child labour, the Committee refers to its comments under the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).***

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

## Uganda

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 4 of the Convention. Supervision and control by a central authority.* In its previous comments, the Committee had requested the Government to pursue its efforts in placing again the labour inspection system under the supervision and control of a central authority, following its decentralization in 1995. In this respect, the Committee recalls the reiterated discussion of the case by the Committee on the Application of Standards (CAS) of the International Labour Conference (in 2001, 2003 and 2008) and the conclusions of the CAS emphasizing the need for the inspection system to be under the responsibility of a central authority. The Committee notes the Government's indication in its report that the Ministry of Gender, Labour and Social Development (MGLSD) plays a supervisory role, although the system of labour inspection is decentralized. The Government indicates that the MGLSD has started a process to amend the legislation and to place the inspection system under a central authority. ***The Committee urges the Government to pursue its efforts to place the labour inspection system under a central authority with a view to ensuring coherence in the functioning of the labour inspection system and to provide information on the steps taken in that regard, including a copy of any legislation adopted.***

*Articles 10, 11 and 16. Resources of the labour inspection system and inspection visits.* In its previous comments, the Committee had requested the Government to pursue its efforts to ensure that human and financial resources are allocated to labour inspection. The Committee notes that the Government indicates that the MGLSD has continued to ensure that human and material resources are allocated to labour inspection and that additional vehicles have been provided to the Department of Labour. However, the Committee notes the Government's indication that inadequate funding continues to represent a challenge. In addition, the Committee notes the 2016 report on the audit undertaken by the auditor general of the Department of Occupational Safety and Health (OSH) of the MGLSD on OSH enforcement activities. The report finds that: (a) out of an estimated 1 million workplaces in the country, only 476 were inspected between 2013 and 2015 (212 in 2012–13, 125 in 2013–14, and 139 in 2014–15, based on departmental annual performance reports); (b) the MGLSD procured analytical and clinical laboratory equipment, but the OSH Department has not fully trained inspectors on the use of the equipment; and (c) enforcement of the OSH legislation has not been effective due to limited personnel and logistics. With respect to personnel issues, the Committee notes that the report indicates that out of 48 approved staff positions, only 22 are currently filled. ***The Committee notes with concern the limited human and material resources allocated to labour inspection and urges the Government to take steps to ensure that there are a sufficient number of labour inspectors provided with adequate resources, including through the filling of vacant positions, in conformity with Articles 10 and 11 of the Convention, in order to ensure that workplaces are inspected as often as is necessary for the effective application of the relevant legal provisions, as required by Article 16 of the Convention.***

*Articles 20 and 21. Publication and communication of an annual report on labour inspection*. In its previous comments, the Committee had noted the Government's commitment to publish and submit to the ILO an annual inspection report on the work of the labour inspection services, pursuant to section 20 of the Employment Act 2006. The Committee notes the Government's indication that a draft annual report has been compiled. However, it notes with ***concern*** that no report has been published or submitted to the ILO. ***The Committee once again requests the Government to take the necessary measures to ensure that annual reports on labour inspection are published and communicated regularly to the ILO within the time limits set out in Article 20 and that they contain the information required by Article 21(a)–(g).***

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

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

## Ukraine

### Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2004)

The Committee notes the observations of the Federation of Trade Unions of Ukraine (FPU), received on 30 September 2020. The Committee proceeded with the examination of the application of Conventions Nos 81 and 129 on the basis of the observations received from the FPU this year (see *Articles 12(1)(a)* and

*(b)*, *16* and *17* of Convention No. 81 and *Articles 16(1)(a)* and *(b)*, *21* and *22* of Convention No. 129 below), as well as on the basis of the information at its disposal in 2019.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the Confederation of Free Trade Unions of Ukraine (KVPU) on the application of these Conventions, received on 29 August 2019.

*Articles 4, 6 and 7 of Convention No. 81 and Articles 7, 8 and 9 of Convention No. 129. Organization of the labour inspection system under the supervision and control of a central authority. Partial decentralization of labour inspection functions.* The Committee previously noted the assumption of labour inspection functions by "authorized officials" within local authorities, in addition to the State Labour Service (SLS). It requested the Government, in line with the 2018 conclusions of the Committee on the Application of Standards of the International Labour Conference, to ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS. In this regard, the Committee once again notes the information provided by the Government in its report on the efforts made to avoid duplication of inspections between the SLS and local authorities. The Committee also notes the information provided by the Government regarding trainings conducted by the SLS with labour inspectors in local authorities. In response to the Committee's previous comments on the recruitment of these authorized officials, including the qualifications required, the Committee notes the Government's indication that, to receive a service certificate as a labour inspector, it is necessary for officials to submit information on qualifications and work experience to the SLS, and that, as of January 2019, there were 1,258 labour inspectors with a service certificate, out of which 531 work for local authorities. The Committee nevertheless notes that the Government has not provided a reply concerning the legal provisions governing the status and conditions of service of these authorized officials, the qualifications required for their recruitment or whether there are regular competitions to recruit them, as there are for SLS inspectors. The Committee recalls that the Committee on the Application of Standards recommended in its 2018 conclusions that the Government ensure that the status and conditions of service of labour inspectors guarantee their independence, transparency, impartiality and accountability in line with the Conventions. ***The Committee therefore urges the Government to indicate the measures taken to ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS. The Committee once again requests the Government to indicate the legal provisions governing the status and conditions of "authorized officials" working as labour inspectors (Article 6 of Convention No. 81 and Article 8 of Convention No. 129), and how it is ensured that their status and conditions of service are such as to guarantee their independence from any improper external influence. The Committee also requests further information on the manner in which it is ensured that "authorized officials" working as labour inspectors have adequate qualifications for the effective performance of inspection duties (Article 7(1) of Convention No. 81 and Article 9(1) of Convention No. 129). In this regard, the Committee requests information related to the labour inspectors working for local authorities, including the number of local authorities employing these inspectors and the number of inspectors at each authority; the compensation levels and tenures of employment for local authority labour inspectors compared with SLS inspectors; and whether training programmes for SLS inspectors are also required for local authority inspectors.***

*Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Material means and human resources to achieve an adequate coverage of workplaces by labour inspection.* The Committee previously requested information on the filling of the vacant labour inspector posts, measures taken to improve the budgetary situation of the SLS, and the material resources at the central and local levels of the SLS. In this regard, the Committee welcomes the Government's indication that, as of 1 January 2019, the number of labour inspectors is 710 (up from 615 inspectors noted in 2018) for 1,003 existing posts (up from 904 noted in 2018). The Committee observes, however, an absence of information on the material resources at the central and local levels of the SLS. ***The Committee therefore requests the Government to take measures to provide sufficient material resources (offices, office equipment and supplies, transport facilities and reimbursement of travel expenses) at the central and local levels of the SLS. The Committee urges the Government to pursue its efforts to fill vacant posts for labour inspectors, and to continue to provide statistics on the number of labour inspectors.***

*Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129. Restrictions and limitations on labour inspection.* 1. *Moratorium on labour inspection.* The Committee previously noted with deep concern that a moratorium was imposed on labour inspection between 1 January 2018 and 22 February 2018. In this respect, it notes the Government's statement that the law introducing the moratorium on state supervision expired on 1 January 2019. The Committee also notes the observations of the FPU, which allege that a moratorium on scheduled measures of state supervision in enterprises considered to be medium-risk or low-risk has been imposed since March 2020, in response to the COVID-19 pandemic. ***Taking into account the particular challenges faced by the***

***country in the context of the COVID-19 pandemic, the Committee urges the Government to resume regular inspections as soon as possible, consistent with public health guidelines in the country. The Committee requests the Government to provide its comments on any developments in this respect.***

2. *Other restrictions.* The Committee previously noted that Act No. 877 of 2007 on Fundamental Principles of State Supervision and Monitoring of Economic Activity (Act No. 877) and Ministerial Decree No. 295 on the procedure for state control and state supervision of compliance with labour legislation of 2017 (Decree No. 295), provide for several restrictions on the powers of labour inspectors. These include restrictions with regard to: (i) the free initiative of labour inspectors to undertake inspections without prior notice (section 5 of Decree No. 295 and section 5(4) of Act No. 877); (ii) the frequency of labour inspections (section 5(1) of Act No. 877); and (iii) the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295). The Committee urged the Government, in line with the 2018 conclusions of the Committee on the Application of Standards, to take the necessary measures and appropriate reforms to bring the labour inspection services and the legislation into conformity with the Conventions.

The Committee notes with ***deep regret*** that the Government has not replied to the Committee's request in this respect. The Committee also notes the observations of the KVPU according to which, following a ruling of the Sixth Administrative Court of Appeal on 14 May 2019, Decree No. 295 no longer applies to labour inspections and the SLS may supervise application of labour law only on the basis of the requirements of Act No. 877. According to the KVPU and the FPU, inspection procedures largely replicate the provisions of Act No. 877 and the SLS carries out labour inspection in accordance with the requirements of the Act. In this respect, the Committee notes the adoption of Ministerial Decree No. 823 of 21 August 2019 on the Procedure for State Control of Compliance with Labour Legislation, as amended by Ministerial Decrees No. 1132 of 4 December 2019 and No. 617 of 8 July 2020. The Committee notes with ***concern*** that Decree No. 823, as amended, provides for restrictions on the powers of labour inspectors with regard to the maximum duration of labour inspections (section 9). The Committee also observes that, while the amendment by Ministerial Decree No. 1132 appeared to remove certain restrictions from Decree No. 823, restrictions on the power of labour inspectors remain under Act No. 877. In this respect, the Committee further notes the FPU's observations, alleging that pursuant to section 1(2) of the amended procedures, labour inspection, with the exception of measures related to the detection of informal employment, must be carried out in accordance with Act No. 877. In addition, the Committee notes the FPU's reference to Ministerial Decree No. 383 of 20 May 2020, which limits the frequency of scheduled measures of state supervision according to the degree of risk attributed to an economic entity, namely: (i) once every two years for high-risk entities; (ii) once every three years for medium-risk entities; and (iii) once every five years for low-risk entities (section 5). The FPU further alleges that a draft Act on the fundamental principles of state supervision prepared by the Government largely replicates Act No. 877 and also limits the powers of labour inspectors.

The Committee recalls its general observation of 2019 on the labour inspection Conventions, expressing concern at reforms that substantially undermine the inherent functioning of labour inspection systems and urging governments to remove these restrictions, with a view to achieving conformity with Convention No. 81 and Convention No. 129. The Committee also recalls that, pursuant to *Article 12(1)(a)* and *(b)* of Convention No. 81 and *Article 16(1)(a)* and *(b)* of Convention No. 129, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection. The Committee also recalls that *Article 16* of Convention No. 81 and *Article 21* of Convention No. 129 stipulate that workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. In addition, *Article 17* of Convention No. 81 and *Article 22* of Convention No. 129 provide that persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it is up to the discretion of the labour inspectors to give warning and advice instead of instituting such proceedings. ***The Committee strongly urges the Government to take the necessary measures and adopt appropriate reforms to bring the labour inspection services and the national legislation into conformity with the provisions of Conventions Nos 81 and 129, including with Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129, and to ensure that no additional restrictions are adopted. The Committee recalls that the Government can avail itself of the technical assistance of the ILO in this regard. The Committee also requests the Government to provide its comments in respect of the FPU's observations, to provide information on any revisions to the legislation governing labour inspection, and to transmit a copy of the new Act on the fundamental principles of state supervision, if adopted. Lastly, the Committee requests the Government to provide information on draft law No. 1233 of 2 September 2019, which has been approved by the Parliamentary Committee for Social Policy and Veteran's Rights, and which foresees further limits on labour inspectors' powers related to the application of fines for certain categories of entrepreneurs, as well as a decrease in the level of applicable fines.***

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

***[The Government is asked to reply in full to the present comments in 2021.]***

## United Kingdom of Great Britain and Northern Ireland

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

The Committee notes the observations of the Trades Union Congress (TUC), communicated with the Government's report and received on 13 October 2020, as well as the response of the Government, received on 29 October 2020.

*COVID-19 measures.* The Committee appreciates the efforts of the Government to provide information in its report in relation to measures taken by the Health and Safety Executive (HSE) and the Health and Safety Executive Northern Ireland (HSENI) in response to the COVID-19 pandemic, which include the provision of information and technical advice, and the establishment of dedicated helplines for workers, trade unions and the public to report concerns about workplace practices. The Committee also notes the Government's statement that the HSE continues to engage with the tripartite stakeholders during this period.

*Articles 6, 10 and 11 of the Convention. Number and conditions of service of labour inspectors.* The Committee previously noted with concern the declining numbers of inspectors, and noted the TUC's allegations concerning important staff recruitment and retention issues faced by the HSE due to limitations on career progression and unattractive wages, compared to similar positions in the private and public sectors.

As regards recruitment and retention measures, the Committee notes the Government's indication that the effectiveness of the HSE demonstrates that there are sufficient numbers of inspectors to secure the effective discharge of its duties. The Committee notes the statistics in the Annual Report of the HSE 2019–20 indicating that there were 1,059 inspectors, visiting officers and regulatory compliance officers in the HSE as of March 2020, compared to 1,066 in March 2019. However, the Committee notes that the TUC alleges the existence of difficulties in reversing the declining numbers of inspectors and that there are only 290 full-time equivalent main grade regulatory inspectors for the whole of the United Kingdom, excluding Northern Ireland. The Committee further notes the Government's statement that additional financial and human resources have been secured to underpin the HSE's approach to the COVID-19 pandemic. In this respect, the Committee notes that, according to the TUC, the additional staff secured using this financing can only be hired under fixed-term contracts, for this financial year. The TUC also indicates that the additional resources have been used to offer HSE staff overtime.

With regard to the conditions of service of inspectors, the Committee notes the Government's statement that it refutes the TUC's observations, and maintains that the pay policy of the public sector is applied fairly. The Committee nevertheless notes the TUC's reference to data from exit interviews in which departing HSE staff indicated to HSE that pay was the main or a significant factor for a large majority in their decision to leave. The TUC further alleges that the higher wages of temporary staff hired in the context of the pandemic have also led to dissatisfaction among the remaining staff. In response to the TUC's observations, the Government asserts that it believes its funding to be adequate, including in relation to the response to COVID-19. The Committee recalls that, in its 2006 General Survey, *Labour Inspection*, paragraphs 204 and 209, it underlined the importance of the levels of remuneration and career prospects of inspectors to attract, retain and protect high-quality staff from any improper influence. ***The Committee requests the Government to continue to provide statistics on the number of inspectors performing labour inspection in the HSE, and detailed information on the conditions of service of labour inspectors, including their actual remuneration scale and career prospects, in relation to comparable categories of government employees exercising similar functions, such as tax inspectors or police officers. In addition, the Committee requests the Government to indicate any measures taken or envisaged to recruit new labour inspectors or to improve the conditions of service of labour inspectors, with a view to retaining them within the labour inspection service. The Committee invites the Government to consider engaging in discussions with the social partners on this issue, and requests the Government to provide information on the outcome of any discussions undertaken.***

*Articles 6, 11 and 15(a). Financial resources of the labour inspection services.* The Committee had previously noted the use of the Fee for Intervention (FFI) cost recovery scheme, which obliges employers in breach of occupational safety and health (OSH) requirements to cover HSE costs in identifying, investigating, rectifying and/or enforcing relevant violations. In this respect, the Committee noted the challenges, based on the Annual Report of the HSE 2018–19, relating to the effective management of the financial resources and the effect of the uncertain nature of FFI income on budgeting. The Committee also noted the TUC's concerns regarding the risk of unintended consequences, such as employer reluctance to seek advice and technical information proactively from the HSE.

In response to the TUC's observations, the Committee notes that the Government considers that there is no risk of employer reluctance, because the fee-paying work would arise in the first instance as a result of a non-fee-paying inspection or investigation. The Committee also notes that, in response to its request for the Government to take measures to address budgeting challenges, the Government indicates that funding is regularly discussed at the senior level of the HSE. The Committee notes that the Business Plan of the HSE 2019–20 refers to increasing the costs recovered from regulatory work, and to the submission of proposals for a future fees and charges strategy to the HSE board. The HSE further indicates in its Annual Report 2019–20, that it expects a significant reduction in its income due to its decreased ability to undertake cost recoverable and commercial work during the COVID-19 lockdown, and that this would inevitably result in a need for additional funding from the Government. ***Reaffirming that labour inspection is a vital public function, at the core of promoting and enforcing decent working conditions, and recognizing the particular challenges faced by the country in the COVID-19 context, the Committee requests the Government to continue to take the necessary measures to ensure that sufficient budgetary resources are allocated for labour inspection. As regards the cost recovery scheme, the Committee requests the Government to provide information on whether employers have been, or will be, surveyed about any reluctance or concerns they may have in seeking technical assistance and advice from HSE in light of FFI, and also detailed information on the strategy of the HSE regarding fees and charges, including income targets established for cost recovery work and the FFI scheme, if any. In addition, the Committee requests the Government to provide detailed information on the outcome of the HSE's proposals concerning funding, with respect to obtaining additional resources.***

*Articles 10 and 16. Resources of the labour inspection system and inspection visits.* 1. *Coverage of workplaces by labour inspection.* The Committee previously noted the reform of the labour inspection strategy regarding the planning and targeting of workplaces for inspections, and underlined the importance of ensuring that often-vulnerable categories of workers are not excluded from protection because they are not employed in high-risk workplaces or sectors, or are employed in sectors where labour inspection is considered too resource-intensive. In this regard, the TUC had alleged that some potentially dangerous workplaces were going without inspection because regional variations and other anomalies were not taken into account in the HSE's approach.

The Committee notes the statistics contained in the Annual Report of the HSE 2019–20, which refer to 13,300 inspections completed in 2019–20, including approximate numbers of inspections in different industries. The Committee also notes that the Government refers to the ongoing reflection and improvement work on the intelligence-led system allowing for the targeting of workplaces ("Going to the Right Places Programme" and the "Find-it targeting tool"), including benchmarking visits to provide a comparison for performance. The Government indicates that following this evaluation, steps were taken to ensure that resources were diverted to sectors where issues were identified. The Committee notes the Government's indication, in particular, that it is important to continue to monitor sectors outside existing higher risks groups, and that it considers vulnerable workers in the establishment of inspection priorities and programmes. The Committee also notes the TUC's observations that the high rate of injuries in low-risk workplaces puts into question the approach of the HSE. The TUC states that the risk-ranking is based on the factory inspectorate model, and is not adapted to workplaces of today, where risks related to various occupational diseases, including COVID-19 infection and occupational cardiovascular disease, as well as psychosocial risks, may affect workers of all types. The TUC also expresses concerns that the data available for the "Find-it targeting tool" is limited, and that the decrease in inspector numbers will have an effect on the quality and quantity of the available data. In this respect, the Committee notes the Government's response to the TUC's observations, indicating that the HSE has dedicated staff undertaking work on psychosocial risks and that data on the subject is recorded and reported annually, thus informing prioritization and resource allocation. ***The Committee requests the Government to provide further detailed information on the manner in which vulnerable categories of workers, or workers in sectors outside identified higher risks groups, are taken into account in the HSE's inspection priorities and programmes. In addition, the Committee requests the Government to continue to provide statistics on the number of inspections conducted, disaggregated by industry, as well as information on the outcome of the assessment undertaken of the "Going to the Right Places Programme" and the "Find-it targeting tool", including their impact on the quality and quantity of labour inspection visits.***

2. *Strategies for compliance in lower-risk small and medium-sized enterprises (SMEs).* The Committee previously noted that long-standing problems, such as helping smaller businesses to manage risks proportionately, were one of the targets of the period covered by the Annual Report of the HSE 2018–19. In this regard, the Committee notes the Government's indication that the HSE has given advice and guidance to address the needs of SMEs on its website, and is currently reviewing the impact of this guidance. ***The Committee requests the Government to continue to provide information on the impact of the measures taken by the HSE on the compliance of SMEs with the relevant legal provisions, and to continue to provide information on measures taken to achieve this objective. The Committee requests the Government to provide information on the outcome of its review on the impact of the guidance provided.***

*Articles 17 and 18. Prompt legal proceedings for violations of the legal provisions enforceable by labour inspectors.* The Committee previously noted a decrease in the number of cases brought by the HSE in which a verdict or conviction has been reached, and requested information on the HSE's assessment regarding the reasons for this decrease. In this respect, the Committee notes the Government's indication that changes to sentencing guidelines for health and safety prosecutions in February 2016 have increased the level of penalties available, which has led to prosecutions taking longer, and that it is still reviewing the factors impinging on prosecution work. The Committee notes that, according to the Annual Report of the HSE 2019–20, there were 355 prosecution cases where a verdict has been reached in the period covered by that report, as compared to 396 in 2018–19 and 509 in 2017–18. The Committee also notes the observations of the TUC, agreeing that the change in sentencing guidelines is slowing down prosecutions, as the prospect of potential increased fines has meant longer sentencing hearings. According to the TUC, the work in this respect takes a significant amount of inspector time and resources and these resource implications must be addressed. The TUC also urges the Government to include trade unions in the ongoing review. The Committee further notes the Government's indication that there have been no changes to HSE policy for decision-making and that it remains committed to prosecuting where there is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to do so. ***The Committee requests the Government to continue to provide information on its assessment of the factors impinging on the HSE's prosecution work and on any measures taken or envisaged to improve the situation, including increased allocations for inspector time and resources, and to provide information on any consultations held on this matter. The Committee also requests the Government to provide further information on the role of inspectors in the process, including the time and resources dedicated to these legal proceedings as a proportion of overall inspector time and resources.***

## Bolivarian Republic of Venezuela

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

The Committee notes the report and the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee notes the observations made jointly by the Independent Trade Union Alliance Confederation of Workers (CTASI) and the Federation of University Teachers' Associations of Venezuela (FAPUV), received on 15 September 2020, the observations made by the CTASI, received on 30 September 2020, and the observations of the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), received on 3 December 2020. ***The Committee requests the Government to provide its comments in this regard.***

*Articles 3(1)(a) and (b), 13 and 16 of the Convention. Labour inspection in the field of occupational safety and health (OSH).* The Committee notes that, in reply to its previous request concerning OSH, the Government indicates in its report that: (i) according to the Report and Account, in 2018 the National Institute of Prevention and Health and Safety at Work (INPSASEL) carried out 1,671 inspections of occupational safety and health conditions; (ii) in 2019, INPSASEL implemented 103 comprehensive actions and 3,014 follow-ups at the national level, which consist of preventive action and monitoring of working conditions and environment by a multidisciplinary team of public officials from the State Departments of Occupational Safety and Health (GERESAT) attached to the Inspection, Occupational Health and Education Coordination Units; and (iii) INPSASEL currently has over 170 inspectors. The Government adds that orders with immediate executory force have not been issued as cases of non-compliance with occupational safety and health requirements have not been identified which could cause immediate and serious danger to the life or health of workers. In this regard, the Committee draws the Government's attention to the fact that the total absence of the identification of serious cases of non-compliance (over a long period of time and for a large population) could, in certain cases, demonstrate that workplaces are not being inspected as often and as thoroughly as necessary. ***With reference to its comments on the OSH Conventions, the Committee requests the Government to make every effort to ensure that OSH inspections are carried out as often and as thoroughly as necessary and to continue providing detailed information on labour inspection in relation to occupational safety and health. With regard to the effect given in practice to Article 13 of the Convention, the Committee requests the Government to investigate and report on the reasons why there have been no orders with immediate executory force issued in the event of imminent danger to the health and safety of workers, and to provide information on this practice in the future.***

*Articles 6, 7(1) and 15(a). Independence and competence of labour inspectors. Legal status and conditions of service of personnel performing inspection duties. Selection of inspectors.* The Committee notes the Government's indication, in reply to its previous comment on the selection criteria for inspectors, that they are related to the skills, training and experience of applicants and that political ideology is not among the requirements for employment. It adds that the recruitment of officials discharging inspection duties is governed by the provisions of the Public Service Regulations Act, the Regulations of the Act on administrative careers and the internal Regulations on recruitment and

employment stability, which are based on the Constitution of the Bolivarian Republic of Venezuela, which provides that the appointment and removal of public employees may not be determined on the basis of political membership or opinions. The Government also indicates that no complaints of discrimination have been received from workers wishing to obtain employment in the labour inspection services. In this regard, the Committee notes that the CTASI and the FAPUV, in their joint observations, reiterate that the appointment and removal of public employees is based on political criteria and that inspectors are not in a position to perform their duties with independence. The CTASI also reiterates that the selection of inspection personnel is discriminatory on grounds of political ideology. The Committee recalls that, under the terms of *Article 6* of the Convention, the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences. *Article 7* also provides that labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties and that the means of ascertaining such qualifications shall be determined by the competent authority. ***The Committee requests the Government to provide its comments on the observations of the CTASI and the FAPUV, and to provide information on the measures adopted or envisaged to ensure the stability and independence of labour inspectors, as required by the Convention.***

*Articles 10 and 11. Number of inspectors and material resources.* The Committee notes the Government's indication, in reply to its previous request, that in 2019 the labour inspection services had 196 labour inspectors assigned to the inspection units of the People's Ministry for the Social Process of Labour (MINPPTRASS), distributed at the national level in accordance with the economically active population, the number of industries and the size of the territory. It adds that, around August 2020, the figure was 184. The Government further indicates that there is at least one inspection unit in each state and the INPSASEL recently completed the first phase of the Comprehensive Intensive Training Programme (PIFI). In this regard, the Committee notes that the CTASI and the FAPUV allege that the labour inspection system is not effective, as the MINPPTRASS does not have sufficient personnel and is the Ministry with the lowest budget, and that the number of inspectors is low and there is a scarcity of means of transport and payments to cover the daily expenses of the staff. The CTASI adds that the budgetary shortage limits the Ministry in the discharge of its principal function of the enforcement of labour legislation. ***The Committee requests the Government to provide its comments in this regard. While observing a slight decrease in the number of labour inspectors, the Committee expects that the Government will take all necessary measures to ensure the effective discharge of the functions of the labour inspection services. The Committee requests the Government to continue providing information on the number of labour inspectors, and particularly on the material resources available to inspectors for the performance of their duties (including vehicles and premises)***.

*Articles 12(1) and (2) and 15(c). Notification of the presence of inspectors on the occasion of an inspection. Timing of inspections. Requirement of confidentiality.* In its previous comment, the Committee noted that section 514(1) of the Basic Act concerning labour and men and women workers (LOTTT) maintains the requirement for inspectors to show identification upon their arrival and to specify the reason for the visit, and that it only allows visits during working hours, which limits the free access of inspectors to workplaces. The Committee notes the Government's indication that under article 89(1) of the Constitution, which provides that with respect to employment relationships, the actual situation shall take precedence over the form or appearance of the relationship, public inspection officials may freely enter at any hour of the day or night any workplace liable to inspection, irrespective of the working hours indicated by the employer, since under the terms of section 516 of the LOTTT the scope of action of public inspection officials includes and covers work units and, in general terms, places where work is performed. The Committee recalls that it had previously raised concerns that the requirement to notify the reason for the inspection under section 514(1) might jeopardize the confidentiality of the existence of a complaint, as well as the identity of the complainant. ***The Committee therefore once again requests the Government to amend the provision referred to above to: (i) ensure recognition in the national legislation of the principle of confidentiality and the power of inspectors provided with proper credentials not to notify their presence if they consider that such notification may be prejudicial to the performance of their duties, as required by Articles 12(2) and 15(c) of the Convention; and (ii) give effect to Article 12(1)(a) of the Convention by empowering inspectors (provided with proper credentials) to enter freely at any hour of the day or night any workplace liable to inspection***.

*Article 16. Supervision by labour inspectors, frequency and thoroughness of inspections.* The Committee notes the Government's indication that the number of inspections was 44,211 in 2016, 38,791 in 2017 and 31,174 in 2018. The Committee also notes that the figure was 12,599 in 2019. The Government adds that in 2016, 2017, 2018 and 2019 a total of 844, 1,313, 7,722 and 5,101 penalties were imposed, respectively. The Government further indicates that in 2016 and 2017, labour inspectorates focused on the application of penalties were established in various states, which resulted in an increase of 100 per cent in the recovery of fines in 2016 and 22.82 per cent in 2017. In this regard, the Committee notes that the CTASI and the FAPUV in their joint observations, and the CTASI in its observations, indicate that, particularly in relation to child labour, where there are serious problems, these figures do not tally with

the real situation in the country. The Committee further notes the indication by the CTASI that the current pandemic has resulted in a decrease in the operations of both labour inspection services and labour tribunals, which is an obstacle to the identification of violations of labour legislation and makes it difficult to make complaints of violations of labour rights. Lastly, the CTASI indicates that although labour inspection services are empowered to impose penalties calculated on the basis of the minimum wage, the penalties are generally very low. ***The Committee requests the Government to provide its comments in this regard.***

***The Committee notes with concern the significant decrease in the total number of inspections in 2019 in comparison with previous years and requests the Government to explain the reasons. The Committee also requests the Government to continue providing statistical data on violations of labour laws, with an indication of the provisions breached and the penalties imposed. With reference to its previous comments concerning the Minimum Age Convention, 1973 (No. 138), the Committee also requests detailed information on the inspection activities carried out in relation to child labour.***

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



## Viet Nam

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)

*Articles 5(a) and 16 of the Convention. Inspections as often and as thoroughly as necessary. Self-inspection and self-assessment. Annual inspection plans.* The Committee previously noted the information provided by the Government in relation to the use of self-inspection forms by the labour inspectorate, as well as a decrease in self-inspection questionnaires used and recommendations issued, as compared to violations detected in the period 2005–12. In this regard, the Committee notes the Government's indication in its report that there are no sanctions in labour legislation for enterprises failing to submit the self-inspection questionnaires, which has led to: (i) low numbers of enterprises returning self-inspection questionnaires; (ii) a low quality of answered questionnaires; and (iii) a low number of recommendations issued. The Government refers to several measures envisaged to improve the effectiveness of self-inspection questionnaires as a tool to assist the labour inspectorate in increasing efficiency and inspections.

The Committee notes with ***concern*** that the Government indicates that, due to several difficulties which include the insufficient number of staff, inspection work has not been performed regularly and thoroughly. In this respect, the Committee notes the Government's indication that the numbers of inspections were 3,667 in 2016, 3,298 in 2017, 3,652 in 2018 and 3,969 in 2019. The Committee further notes that, pursuant to the Directive of the Prime Minister No. 20/CT-TTg dated 17 May 2017 regarding the Reorganization of Inspection and Examination Activities for Enterprises, the formulation and approval of an annual inspection plan must ensure that an enterprise does not undergo more than one inspection every year from a state inspection body. The Directive further provides that, with respect to ad hoc inspections, it is not allowed to expand the inspection scope, and inspect contents that are outside the scope of the inspection decision. In this regard, the Committee notes the Government's indication that a number of planned inspections could not be performed, due to overlapping functions and mandates with other agencies. The Committee observes that restrictions on the frequency and scope of inspections could pose limitations on the ability of labour inspectors to inspect workplaces as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, in accordance with *Article 16*. In this respect, the Committee recalls its general observation of 2019 on the labour inspection Conventions, expressing concern at reforms that substantially undermine the inherent functioning of labour inspection systems and urging governments to remove these restrictions, with a view to achieving conformity with Convention No. 81. ***The Committee requests the Government to take the necessary measures to ensure that, in accordance with Article 16 of the Convention, workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. The Committee requests the Government to provide further information on the impact of the Directive of the Prime Minister No. 20/CT-TTg dated 17 May 2017 on the inspections of the labour inspectorate, including with respect to their frequency and scope. In this regard, it requests the Government to provide detailed statistics on conducted inspection visits, disaggregated by sector and by inspection type (inspections performed according to inspection plans, regular inspections or ad hoc inspections) and identifying the number of inspections responding to complaints or to accidents, and inspections that are announced versus unannounced. The Committee also requests the Government to provide further specific information on why a number of planned inspections could not be performed, indicating in detail what overlapping functions and mandates with other agencies prevented these inspections from being carried out. In addition, the Committee further requests information on the number of self-inspection questionnaires issued and returned. Recalling that self-inspection and self-assessment should be complementary to, and not replace, labour inspection, the Committee requests***

***the Government to provide further information on the measures taken by labour inspectors in cases where enterprises fail to respond to self-inspection questionnaires.***

*Article 3(2). Additional functions entrusted to labour inspectors.* Following its previous comments on the exercise of multiple functions by inspectors and the low number of inspectors, the Committee notes that the Government indicates that the overall number of inspectors remains insufficient. The Government states that only approximately one third of the 464 inspectors in the labour sector, working for the Ministry of Labour, War Invalids and Social Affairs (MOLISA), the agencies performing specialized inspection functions under the MOLISA, and the provincial Departments of Labour, Invalids and Social Affairs, perform labour inspection tasks. The Committee notes that, pursuant to section 214 of the Labour Code 2019, labour inspection includes the handling of labour-related complaints and denunciations, but also notes the Government's statement that the labour dispute settlement process in compliance with the provisions of the Labour Code and the Criminal Procedure Code does not involve labour inspectors. ***Taking into account the difficulties raised by the Government regarding the number of inspectors in relation to their increasing workload, the Committee requests the Government to provide detailed information on all additional functions or responsibilities that are assigned to or expected from labour inspectors, separately identified for the national and provincial levels. The Committee also requests the Government to provide detailed information on the proportion of time and resources spent by labour inspectors on their primary functions, as set out in Article 3(1), compared to those spent on all additional functions entrusted to them, separately assessed for the national and provincial levels. The Committee strongly encourages the Government to take the necessary measures to ensure that, in accordance with Article 3(2) of the Convention, any duties which may be entrusted to labour inspectors in addition to their primary duties shall not be such as to interfere with the effective discharge of those primary duties.***

*Articles 5(a), 20 and 21. Publication of an annual inspection report.* The Committee notes the Government's indication that the Inspectorate of the MOLISA (Ministry Inspectorate) prepares an annual inspection report, in accordance with the regulations of the Government Inspectorate, containing the information covered by *Article 21*, except for statistics on occupational accidents and diseases. The Committee nevertheless notes that no annual report on the activities of the labour inspection services has been transmitted to the Office. In this regard, the Committee notes that the Government requests technical assistance from the Office as regards the establishment of a database of enterprises covering all types of production and businesses, to help it report on the information covered by *Article 21(c)* of the Convention. ***The Committee requests the Government to take all the necessary measures to ensure that the annual report of the labour inspectorate is published and transmitted to the ILO in the near future, in accordance with Article 20 of the Convention, and that this annual report contains information on all the subjects listed under Article 21. The Committee hopes that the technical assistance requested by the Government will be provided in the near future, with a view to ensuring the establishment of a register of enterprises and full compliance with Articles 20 and 21 of the Convention.***

*Articles 10 and 11. Resources available to the labour inspectorate.* Further to its previous comments which noted the Government's indication that human resources, material means and facilities of the labour inspectorate were inadequate, the Committee notes the Government's indication that increasing the number of labour inspectors has been difficult. The Government states that there were approximately 155 officials performing labour inspection tasks, from the Ministry Inspectorate, the agencies performing specialized inspection functions under the MOLISA, and the provincial Departments of Labour, Invalids and Social Affairs. The Government indicates that while the labour inspection team has a strong background, the current number of inspectors is still deemed to be insufficient. The Committee further notes the Government's indication that some localities have few inspectors while their tasks have increased and their work becomes more complex, which has a negative impact on the validity and effectiveness of inspection activities. Concerning material means, the Committee notes section 6 of Circular No. 14/2015/TT-BLDTBXH of 2015 of the MOLISA, as amended, which stipulates that inspectors must be provided with equipment and working facilities at the agency, in accordance with laws and regulations, and stipulates the equipment provided to inspectors on work trips. ***The Committee urges the Government to strengthen its efforts with a view to ensuring that the labour inspectorate has sufficient human and material resources for the effective discharge of its duties. In addition, the Committee requests the Government to provide information on the application in practice of section 6 of Circular No. 14/2015/TT-BLDTBXH, as amended, and to continue to provide information on the tools and other material means available to labour inspectors.***

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

## Zimbabwe

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1993)

### Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1993)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee takes note of the Government's report and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

*Articles 3(1)(a) and (b), 4 and 6 of Convention No. 81 and Articles 6(1)(a) and (b), 7 and 8 of Convention No. 129. Functions assumed by designated agents.* In its previous comments, the Committee requested the Government to indicate whether the "designated agents" of the employment councils (which report to the Ministry of Public Service, Labour and Social Welfare) assume labour inspection functions as provided for in *Article 3(1)(a) and (b)* of Convention No. 81 and *Article 6(1)(a) and (b)* of Convention No. 129, or whether they assume exclusively other functions, such as the conciliation and mediation of labour disputes. The Committee notes that the Government indicates in its report that "designated agents" carry out functions of conciliation and mediation of labour disputes in their respective sectors, in addition to carrying out labour inspection functions. It also notes the Government's indications that "designated agents" of employment councils derive their powers from section 63 of the Labour Act and exercise similar functions to those of labour officers, except that they operate only in one specific industry. ***The Committee requests the Government to provide information on the manner in which the labour inspectorate maintains supervision and control of the designated agents in their performance of labour inspection functions, in accordance with Article 4 of Convention No. 81 and Article 7 of Convention No. 129. It also requests the Government to provide specific information on the labour inspection powers and duties of these agents, the resources provided to them, the procedures for their recruitment and any training provided to them. Lastly, the Committee requests the Government to provide further information on the status and conditions of designated agents performing labour inspection functions (Article 6 of Convention No. 81 and Article 8 of Convention No. 129), including their conditions of job security and levels of remuneration in comparison to job security and remuneration for other employees performing labour inspection functions, and how it is ensured that the status and conditions of service of designated agents are such as to guarantee their independence from any improper external influence.***

*Article 13 of Convention No. 81 and Article 18 of Convention No. 129. Preventive measures by labour inspectors with immediate executory force.* The Committee previously noted that the Factories and Works Act gives partial effect to Article 13 of Convention No. 81, and noted the Government's indication that the proposed Occupational Safety and Health (OSH) Bill would explicitly provide inspectors with immediate executory powers to stop work where there is imminent danger to the worker. The Committee notes that, in reply to its previous request, the Government once again refers to certain provisions of the Factories and Works Act relating to the powers of inspectors (sections 5(6), 6 and 19(1)(a) and (b)) and states that the jurisdiction of inspectors under this Act is limited to factories and building works, leaving a gap with respect to non-factory environments, such as agriculture. The Government adds that the OSH Bill seeks to extend inspectors' mandate to cover all workplaces. The Committee further notes that, according to the supplementary information provided by the Government, the OSH Bill has been submitted to the Cabinet Committee on Legislation for consideration. ***The Committee requests the Government to pursue its efforts to give full effect to Article 13(2)(b) of Convention No. 81 and Article 16(2)(b) of Convention No. 129, to empower inspectors to make orders requiring measures with immediate executory force in the event of imminent danger to the health or safety of the workers in all sectors, and to provide examples of instances when factory inspectors have undertaken preventive measures with immediate executory force, including but not limited to issuing prohibition notices, or ordering work stoppages. While welcoming the indication of progress on the OSH Bill, the Committee notes that the Government has been referring to the proposed or upcoming OSH Bill for a number of years; the Committee trusts that the Government will soon be in a position to provide specific information on the adoption of the OSH Bill.***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 63** *(United Kingdom of Great Britain and Northern Ireland: Guernsey and St Helena, Uruguay);* **Convention No. 81** *(Albania, Angola, Antigua and Barbuda, Bangladesh, Barbados, Chad, Comoros, Democratic Republic of the Congo, Djibouti, France: French Polynesia, Grenada, Guinea-Bissau, Haiti, India, Kyrgyzstan, Lebanon, Malawi, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russian Federation, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain*

*and Northern Ireland: Guernsey and Isle of Man, United Republic of Tanzania: Tanganyika, Uruguay, Bolivarian Republic of Venezuela, Viet Nam, Zimbabwe);* **Convention No. 85** *(United Kingdom of Great Britain and Northern Ireland: Anguilla, British Virgin Islands, Montserrat and St Helena, United Republic of Tanzania: Zanzibar);* **Convention No. 129** *(Albania, France: French Polynesia, Malawi, Poland, Portugal, Romania, Saint Vincent and the Grenadines, Serbia, Slovenia, Spain, Sweden, Syrian Arab Republic, Ukraine, Uruguay, Zimbabwe);* **Convention No. 150** *(Belize, Côte d'Ivoire, Democratic Republic of the Congo, Dominica, Lebanon, Malawi, Togo, Trinidad and Tobago, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Isle of Man and St Helena, United States of America, Uruguay, Bolivarian Republic of Venezuela, Zimbabwe);* **Convention No. 160** *(Côte d'Ivoire, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Gibraltar, Isle of Man and Jersey, United States of America).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 81** *(United Kingdom of Great Britain and Northern Ireland: Jersey).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 81** *(Seychelles, United Kingdom of Great Britain and Northern Ireland: Gibraltar, Guernsey, Isle of Man and Jersey)*; **Convention No. 150** *(United Kingdom of Great Britain and Northern Ireland: Gibraltar, Guernsey and Isle of Man)*.

# Employment policy and promotion

## General observation

### Employment Policy Convention, 1964 (No. 122)

The Committee notes that, in the year since its previous session in November 2019, the world has experienced a global pandemic that has had profound, far-reaching health and socio-economic consequences. Efforts to control the spread of the COVID-19 virus through confinement measures have led to closures of businesses of all sizes across many economic sectors, with ensuing job losses for millions. In addition, educational and vocational training systems and institutions have been disrupted, forcing many to place their training and education on hold due to the pandemic. ILO Member States have sought to mitigate the impacts of the health and socio-economic crisis through immediate and longer-term response and recovery measures as the crisis continues to evolve.

The COVID-19 crisis threatens the survival of enterprises, jobs and incomes for workers, including self-employed workers, increasing poverty and exacerbating existing inequalities in access to employment and decent work. Moreover, the Committee observes that the pandemic has accelerated changes that were already occurring in the structure and organization of work due to globalization, digitalization and other technological innovations that have led to new and emerging working arrangements. Telework and digital platform work have increased exponentially as urgent measures to prevent the spread of the virus have meant that more workers are working at home and electronically where they are able to do so.

While the nature and extent of the impacts of the pandemic vary between regions and countries, as well as between and across economic sectors, access to full, productive and freely chosen employment and decent work is essential for all workers, just as the ability to retain a skilled, qualified workforce is essential for employers to ensure the optimal functioning of their businesses.

In this context, the Committee wishes to draw attention to its 2020 General Survey on Promoting Employment and Decent Work in a Changing Landscape, which examined the application of Convention No. 122, together with an additional seven employment instruments. [1] It also refers to its Addendum, published after the outbreak of the COVID-19 pandemic, in which the Committee examines the impact of the pandemic on the application of the instruments examined in the General Survey. The General Survey is already available on the NORMLEX website and the Addendum will be available once it is published in early 2021.

In addition, and taking into account the many dimensions of the current socio-economic and employment crisis, the Committee intends for this general observation to enhance awareness, understanding and use of the principles and guidance contained in Convention No. 122, as the overarching governance Convention dedicated to the promotion of full, productive and freely chosen employment and decent work. Its intent is also to highlight the importance of a number of related employment instruments, primarily certain instruments not examined in the General Survey or Addendum, that the Committee nevertheless considers to be directly relevant to the design, development and effective implementation of sustainable economic recovery, employment and job creation measures.

The Committee observes that, taken together, these instruments offer extensive practical guidance that may assist ILO constituents in the development and effective implementation of comprehensive, sequenced, multi-track response and recovery measures. Such measures will support countries in responding to the current global crisis, ensuring an inclusive, sustainable recovery as well as increased resilience and preparedness to enable countries to face future crises that may arise.

#### Promoting full, productive and freely chosen employment, decent work and income-generation opportunities

*Article 1.* In its 2005 general observation on Convention No. 122, the Committee noted that the primary objective of Convention No. 122 as expressed in its *Article 1(1)* is the pursuit of "an active employment policy, which has as a major goal of macroeconomic policy, a focus on the design and implementation of an active employment policy. The achievement of full and productive employment should not be an afterthought, but should be considered throughout the macroeconomic policy formulation stage."

[1] The Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and its Recommendation No. 168, 1983; the Home Work Convention, 1996 (No. 177), and its Recommendation No. 184, 1996; the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169); the Employment Relationship Recommendation, 2006 (No. 198); and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

The Committee wishes to draw particular attention in this context to the comprehensive guidance provided in the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), in relation to the measures to be taken to generate employment and decent work in crisis situations, for purposes of, among other objectives, recovery and resilience (Paragraph 1). Recommendation No. 205 expressly provides that, in enabling recovery and building resilience, Members should adopt and implement a comprehensive and sustainable employment strategy to promote full, productive, freely chosen employment and decent work for both women and men, taking into account the provisions of Convention No. 122 (Recommendation No. 205, Paragraphs 7(a) and 10).

*Article 2* calls on governments to keep under review, in the framework of a coordinated national economic and social policy, the measures taken to achieve the goals of the national employment policy.

The Committee notes in this regard that the impact of such measures should be assessed regularly so that they may be adjusted as needed to effectively tackle challenges through general as well as targeted measures. Moreover, in its comments over the years on the application of Convention No. 122, the Committee has emphasized the need to regularly examine and assess the evolving situation of the national labour market, inter alia, by collecting, compiling and disseminating information on employment trends, including the size and distribution of the economically active population, work, employment, unemployment, hours of work and labour underutilization, among others. Reliable labour market data is critical to ensure that labour policies are adequate, and that educational and training systems are adapted to anticipate and meet current and emerging skills needs. The latter has been a challenge during the COVID-19 pandemic, when virtually all countries saw their statistical sources disrupted. While the ILO actively supported emergency plans to keep the information flowing at the national level, it undertook an innovative global technique using now-casting methods to estimate the impact of the pandemic on the world of work, by estimating the loss of hours of work in all regions, and by ranking sectors of activities by risk. This dimension takes on crucial importance given that, due to the crisis, certain key economic sectors have been devastated, such as tourism, aviation and others, including global supply chains, or have been severely disrupted, in many cases leaving workers at the end of the chain with few options but to seek alternative employment as and where they can. On the other hand, certain sectors have experienced increased demand, such as health, emergency services, food and agriculture, and information technology. Moreover, the Committee observes that enterprises and workers in these sectors are often at the front lines of the pandemic, where ensuring occupational safety and respect for fundamental principles and rights at work and international labour standards must be ensured as integral components of crisis response.

*Article 3* of Convention No. 122 calls on Member States to engage in consultations in relation to the development and implementation of active labour market measures. The Committee considers that inclusive, gender-responsive measures to promote sustainable employment and decent work, income-generation opportunities and job-rich growth should be planned, implemented and monitored in consultation and with the active participation of employers' and workers' organizations, and take into account the views of representatives of persons concerned by the measures to be taken. In this respect, Recommendation No. 205 highlights the importance of consultation and social dialogue, contemplating in addition consultation with civil society organizations, where appropriate (Paragraphs 8(d) and 11) (See also Part VII of Addendum to 2020 General Survey on *Promoting Employment and Decent Work in a Changing Landscape*).

The Committee notes that designing and implementing an effective response to the socio-economic aftermath of the COVID-19 crisis requires a multi-track approach that includes a range of sequenced policy measures, ranging from immediate urgent measures to intermediate and longer-term measures. It recalls that *Recovering from the Crisis: A Global Jobs Pact* (2009), adopted by the Conference in the context of the 2008 financial and economic crisis, called on ILO Member States to pursue a decent work response to the crisis, based on international labour standards, that ensures the link between social progress and economic development.

The Committee notes that the pandemic has highlighted the need to strengthen public health systems in most Member States. In this respect, it recalls the importance in the response to the pandemic of social policy instruments, such as the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), which seek to improve the standards of living and social progress of the peoples concerned and establish general principles calling on Member States to ensure that all such policies are primarily directed to the well-being and development of the population and the promotion of its desire for social progress. In its Preamble, Convention No. 117 affirms that economic development must serve as a basis for social progress, providing, inter alia, that all steps should be taken by appropriate international, regional and national measures to promote improvement in such fields as, inter alia, public health and social security (see also Article 4 of Convention No. 82). The Committee recalls that Convention No. 122 and the body of related employment instruments are closely linked to fundamental principles and rights at work and to both the fundamental and priority Conventions. In its Preamble, referring to the Universal Declaration of Human

Rights, 1948, Convention No. 122 affirms that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". In addition, the Preamble highlights certain instruments of direct relevance to employment policy, including the Employment Service Convention, 1949 (No. 88) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Private Employment Agencies Convention, 1997 (No. 181), while providing for the regulation of private employment agencies and their coordination with public employment services, also provides for the protection of workers' rights based on international labour standards.

To achieve the objective of full, productive and freely chosen employment set out in Convention No. 122, certain key steps must be taken. First, there must be a political commitment to ensure the right to work by realizing full employment. Secondly, Member States must build or strengthen the institutions necessary to ensure the best possible organization of the labour market. Third, States must take measures to support inclusive access to employment by supporting education and training as well as lifelong learning, to reduce skills mismatches and anticipate labour demands, particularly in a rapidly shifting world of work where the pace of change due to factors such as globalization, digitalization and technological innovations continues to accelerate. Against this backdrop, the Committee notes that the pandemic has caused seismic shifts by devastating certain sectors while increasing demand in others, highlighting the need for resilient and integrated systems that can adapt effectively and quickly in situations of crisis to reskill and upskill workers in order to enhance their employability and facilitate their redeployment to other occupations and sectors where demand is high.

The Committee observes that Convention No. 122, taken together with the body of interdependent and mutually supporting employment instruments referenced, provides a comprehensive framework for realizing the right to full, productive and freely chosen employment and decent work, as well as to education and vocational training as a necessary condition for achieving this objective.



*Education, vocational training and lifelong learning*

The Human Resources Development Convention (No. 142) and Recommendation (No. 195), (1975) provide comprehensive guidance in this area. In particular, the Human Resources Development Convention, 1975 (No. 142), calls on States to put in place comprehensive and coordinated policies and programmes of vocational guidance and training that are closely linked with employment, particularly through public employment services (Article 1(1)). Convention No. 142 reflects the notion of freely chosen employment, calling for countries to develop inclusive policies and programmes whose purpose is to "encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, the needs of society being taken into account" (Article 1(5)).

The Human Resources Recommendation, 2004 (No. 195) recognizes in its Preamble that "education, training and lifelong learning contribute significantly to promoting the interests of individuals, enterprises, the economy and society as a whole, especially considering the critical challenge of attaining full employment, poverty eradication, social inclusion and sustained economic growth in the global economy". Recommendation No. 195 calls for Members to take steps to facilitate access to lifelong learning, recognizing that education and training are critical to meet emerging skills needs for both workers and employers.

The Committee observes that access to education and training, as well as to job counselling and placement services, is particularly crucial for young women and men as a result of the crisis. Young persons are already disadvantaged in the labour markets of most countries, with unemployment rates in some countries that are more than twice as high as those of adult workers. To avoid a "lockdown" generation that may be affected by the current crisis for decades to come, youth employment policies and active labour market measures should be developed that, among other things, seek to ensure access to education, vocational training and skills development and to facilitate the transition from education and training to work.

In the context of the current crisis, the Committee observes that educational and training systems, as well as employment services, should assist workers who seek to use their transferable skills, upskill and re-skill to enable them to be redeployed to other suitable work. To ensure increased socio-economic resilience for future crises, the Committee stresses that employment impact assessments and the compilation and analysis of labour market information are essential tools that inform the development and implementation of evidence-based policies for the promotion of full, productive and freely chosen employment and decent work.

The Committee welcomes the technical assistance provided by the Office in carrying out rapid employment impact assessments. It notes that the ILO Guidelines on Rapid Diagnostics for Assessing the Country Level Impact of COVID-19 on the Economy and Labour Market were applied in 47 countries covering all regions, to assist the tripartite constituents in the formulation of targeted policy recommendations for an employment-rich recovery, with a focus on hard-hit groups such as migrants, informal economy workers, women and youth. These guidelines promoted strong tripartite engagement

in addressing the impact of the crisis on labour markets. In some cases, such assessments were carried out in cooperation with the World Bank, the United Nations Development Programme and regional financial institutions, such as the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank.

Recommendation No. 205 recognises the need in crisis situations to assess and meet emerging skills needs, providing that States should formulate or adapt a national education, training, retraining and vocational guidance programme that assesses and responds to emerging skills needs for recovery, in consultation with education and training institutions and social partners. Recommendation No. 205 invites States to coordinate education, training and retraining services, including higher education, apprenticeship, vocational training and entrepreneurship training, so as to enable those whose education and training have been interrupted to access education and training (Paragraph 19(c)).

The ILO Centenary Declaration, 2019 affirms that in its human-centred approach to the future of work, the ILO must direct its efforts to, among other things, promoting the acquisition of skills, competencies and qualifications for all workers throughout their working lives, to address existing and anticipated skills gaps, ensure that education and training systems are responsive to labour market needs and enhance the ability of workers to access decent work opportunities (section II.A.(iii)). These objectives are more critical than ever to ensure a brighter future of work in the aftermath of the COVID-19 pandemic.

### Promoting sustainable enterprises as drivers of productive employment and decent work

The Committee notes that the achievement of full, productive and freely chosen employment is not possible without establishing enabling environments for the creation and growth of sustainable and resilient enterprises. Recommendation No. 205 recognizes the importance of creating or restoring an enabling environment for sustainable enterprises, particularly small and medium-sized enterprises, as well as cooperatives and the social and solidarity economy, to generate employment, decent work and income generation opportunities (Paragraph 11 (c)).

The Committee welcomes in this respect the monitoring and collection by the ILO of key information resources available on the functioning of enterprises in the crisis, including its impact on enterprises, responses by enterprises and state policy measures to support affected enterprises. The Office has launched on-line dedicated products, tools and guidelines to assist enterprises in adjusting to the impact of the pandemic, including a site on COVID-19 Enterprises Resources and a SME Resilience COVID-19 section, which provide guidance on: COVID-19 impact assessment, informality in micro and small enterprises, business continuity, protection of workers, and inclusive finance, among others. A dedicated section on Business and COVID has also been created in the Helpdesk for multinational enterprises, including prevention and mitigation checklists for SMEs and guidance on teleworking.

The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), recognizes that small and medium-sized enterprises play a fundamental role in economic growth and development, are increasingly responsible for the creation of the majority of jobs throughout the world, and can help create an environment for innovation and entrepreneurship. Moreover, it recognizes that small and medium-sized enterprises provide the potential for women and other traditionally disadvantaged groups to gain access under better conditions to productive, sustainable and quality employment opportunities. It calls on governments to create an environment that is conducive to the growth and development of these enterprises and removes barriers to their functioning.

Subsequently, with the adoption of the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Conference also recognized the importance of cooperatives in job creation, which operate in all sectors of the economy, including in the informal economy. It calls on Members to take measures to support and strengthen cooperatives by providing a supportive policy and legal framework consistent with the nature and function of cooperatives and guided by cooperative values and principles (Paragraphs 3 and 6). The Committee notes that, in the context of the pandemic, cooperatives and other social and solidarity economy organizations around the world have been providing essential assistance to their members, connecting people in need of support with local governments and social partners. Financial cooperatives have provided liquidity support to their members, launching crowdfunding and other solidarity initiatives to support local micro, small, and medium enterprises as well as people in vulnerable situations. Many cooperatives have transformed their products and services to meet urgent local needs for protective equipment and social care. In the framework of ongoing development cooperation projects, the ILO has included the impact of COVID-19 in cooperatives needs assessments to better assess and address current and future needs. Direct financial and technical support is being provided to social and solidarity economy organizations (SSEOs) hit by the crisis. At the global level, the Office is documenting good practices of cooperatives and SSEOs in responding to the crisis, so that these examples can inform the development of response and recovery measures by ILO constituents.

The Committee further notes that Recommendation No. 205 calls on States to create incentives in crisis situations for multinational enterprises to cooperate with national enterprises to create productive,

freely chosen employment and decent work, taking into account the *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (Paragraph 11(h)).

### *Non-discrimination and inclusivity*

The Committee has previously emphasized the importance of developing and effectively implementing inclusive employment policies in times of crisis that provide for equality of opportunity and treatment as a priority and take the needs and concerns of those in vulnerable situations into consideration. In the context of the pandemic, the Committee notes that employment policies should provide for both integrated and targeted measures.

In this respect, the Committee observes that all response and recovery measures should be gender-responsive. Women have been affected significantly by the pandemic, suffering higher levels of job loss and unemployment rates overall. In addition, women are more likely than men to be in precarious, poorly remunerated informal jobs. On the other hand, women are concentrated in certain jobs and sectors at the front lines of the pandemic, for example, as supermarket workers or as care economy workers (such as doctors, nurses and other health care professionals and domestic workers). The Committee notes that not only are these workers at higher risk of exposure to the virus, during the pandemic they have been required to work excessive hours while also shouldering an increased burden of caring for children and elderly or ill family members.

These inequalities are compounded in situations of discrimination on multiple and intersecting grounds, which may include sex, race, colour, religion, disability, migrant status, sexual orientation, gender identity and other grounds. The Committee emphasizes that, where individuals belong to more than one disadvantaged group, multiple and intersectional discrimination compounds and exacerbates existing inequalities, affecting both health and economic outcomes.

Policy responses to the crisis need to take into account both multiple and intersecting forms of discrimination and inequalities, including pervasive gender inequalities. For example, women belonging to minority groups have faced persistent inequality during the COVID-19 crisis, given the intersecting burdens they carry due to gender discrimination and inequality. Minority women are disproportionately represented in informal economy jobs, which are more vulnerable to disruption and fail to provide health coverage, unemployment benefits or paid sick leave.

The pandemic has also shown the importance of addressing stigma in addition to discrimination. The Committee notes that there have been instances of stigmatization of certain groups blamed for transmitting the virus, including migrants and frontline health workers. In the case of health workers, there have been incidents of stigmatization, violence and harassment during the pandemic, where they are seen as possible sources of infection due to the work they perform. Members of these groups are also more frequently subjected to violence and harassment. For these reasons, the Committee stresses the need to squarely address stigma and discrimination in developing and implementing crisis response and recovery measures.

In this regard, Recommendation No. 205 provides that "in taking measures on employment and decent work in response to crisis situations, Members should take into account the need to combat discrimination, prejudice and hatred on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, disability, age or sexual orientation or any other grounds" (Paragraph 7(f)).

The Committee notes that in many countries the majority of the population is employed in the informal economy, where many disadvantaged groups are concentrated. While the Committee has recently examined the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) in its General Survey, it nevertheless wishes in this general observation to encourage States to refer to the guidance provided in Recommendation No. 204 in developing and implementing measures aimed not only at facilitating the transition to the formal economy, but also measures to prevent the informalization of formal economy jobs.

### *Tripartite consultation and social dialogue*

The Committee recalls that tripartite consultation and social dialogue are essential in normal times and become even more critical in times of crisis (2010 General Survey, paragraph 794). *Article 3* of Convention No. 122 requires ratifying States to consult with the social partners and with representatives of those affected by the measures to be taken. Recognition of the importance of consultation and social dialogue is a thread running through Convention No. 122 and its related Recommendations (Nos. 122 and 169), as well as through all of the employment instruments highlighted in this general observation, which require Member States to engage in consultations with the social partners as well as with representatives of concerned groups (See also Part VII of the Addendum to the 2020 General Survey).

The Committee notes the concerns expressed in the observations by the employers' and workers' organizations that in many cases governments took urgent measures to mitigate the effects of the crisis through the development of employment policies without their participation. In this regard, the Committee notes that effective consultation and participatory social dialogue facilitates the design,

development and implementation of agreed solutions that take into account the perspectives and concerns of the individuals and groups involved, and promotes greater ownership of and commitment to the outcomes of the participatory process. Recommendation No. 205 emphasizes the importance of social dialogue and tripartite consultation in response to crisis situations (Preamble, Paragraphs 8(d), 24 and 25). In particular, Paragraph 24 calls on Members to ensure that the response measures contemplated in the Recommendation are developed or promoted through gender-inclusive social dialogue, taking into account the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

## Conclusions

The Committee notes that most countries, including those that have not ratified Convention No. 122, have adopted some form of employment plan, policy or strategy designed to promote employment and job creation. Nevertheless, the Committee notes a range of gaps and challenges identified in the reports of countries and the social partners that may limit the beneficial impact of these plans, policies and strategies during this pivotal period of crisis. It observes that many such policies do not address the needs of all segments of the population, particularly of those groups that encounter the most difficulties in accessing the labour market (women, young people, older workers, persons with disabilities, racial and ethnic minorities and others). In this respect, the Committee notes that the information provided by ratifying States on the application of Convention No. 122, including in the context of the pandemic, has shown that taking an inclusive approach to responding to the crisis, based on reliable labour market data, has enabled them to develop effective targeted responses that take into account the different needs and concerns of workers, businesses and economic sectors.

Therefore, the Committee encourages governments and social partners in those countries to take the necessary measures to develop, declare and pursue, through a participatory social dialogue process, inclusive, gender-responsive and comprehensive employment policies that take account of the provisions of Convention No. 122 and of the body of employment instruments adopted. It recalls that constituents may avail themselves of ILO technical assistance in this respect.

The Committee also notes that a number of countries have adapted their existing employment policies specifically to address issues of concern arising during the pandemic, such as promoting the survival and sustainability of enterprises and livelihoods, job retention as well as job creation, education and training, particularly reskilling and upskilling. Governments are encouraged to ensure that these policies and their implementation take into account all segments of the population, particularly those made more vulnerable by the crisis, as well as the need to strengthen national institutions and international cooperation with a view to enhancing resilience and preparedness in the event of future crises, whatever form these may take.

The need to address the human dimension of the COVID-19 pandemic must be at the forefront of response and recovery measures. In this respect, the Committee recalls that the Centenary Declaration for the Future of Work adopted by the Conference in June 2019 calls for the ILO to carry forward into its second century with unrelenting vigour its constitutional mandate for social justice by further developing its human-centred approach to the future of work, putting workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies (ILO Centenary Declaration, Part I. D). In adopting the Centenary Declaration, the tripartite constituents highlighted the transformative changes taking place in the world of work as well as the persistent inequalities that remain. They recognised that it is imperative to act with urgency to seize the opportunities and address the challenge to shape a fair, inclusive and secure future of work with full, productive and freely chosen employment and decent work for all (ILO Centenary Declaration, Part I.). The Committee considers that responding to this clarion call is more critical than ever before in the context of the pandemic, which represents one of the most significant challenges yet faced by the ILO and its constituents. The human-centred approach is key to the success and sustainability of efforts made to overcome this crisis.

The Committee encourages constituents to ensure that all response and recovery measures developed and implemented are based on respect for human rights and the rule of law, including respect for fundamental principles and rights at work and international labour standards, comprising the fundamental and governance Conventions, as well as the technical Conventions. It requests governments to provide information on steps taken to ensure that measures taken in relation to promoting employment and decent work during and after the crisis are based on those principles and standards.

Finally, to enable the Committee to effectively assess the application of ratified Conventions, and also to enable the Office to facilitate the exchange of good practices, innovative and effective solutions, and lessons learned, the Committee invites constituents to continue to collect and communicate, together with their reports, detailed information on the inclusive, gender-responsive employment policies and active labour market measures adopted or envisaged in response to the pandemic and the socio-economic crisis left in its wake, which would impact on the application of Convention No. 122 and the additional employment instruments examined herein, particularly with respect to:

- new employment-related policies and programmes adopted taking into account the impact of the COVID-19 crisis;
- adaptations made to existing policies and programmes to promote employment and decent work;
- measures taken to create an enabling environment for entrepreneurship and for enterprises of all sizes, particularly micro, small and medium-sized enterprises;
- measures to promote cooperatives as sources of income and livelihoods for workers, especially those in the informal economy and those belonging to disadvantaged groups;
- the manner in which employment-related policies, programmes and measures ensure inclusivity and integrate the fundamental principle of non-discrimination and equality of opportunity and treatment, starting with gender equality;
- measures taken to establish or strengthen the national institutions necessary to ensure effective response and recovery, including the public employment service and private employment agencies, where these exist, as well as educational and vocational guidance and training institutions;
- examples of consultation and social dialogue in the development, implementation, monitoring and review of response and recovery measures;
- obstacles encountered and lessons learned in the development and effective implementation of crisis response and recovery measures.

The Committee considers that the development of a transformative agenda to achieve employment and decent work that is aligned with the human-centred approach adopted by the Conference in the ILO Centenary Declaration for the Future of Work, 2019 and with the Sustainable Development Goals, and is based on fundamental principles and rights at work as well as international labour standards, is key to overcoming the devastating impacts of the pandemic. The Committee expresses the hope that the pursuit of this objective, guided by Convention No. 122 and related instruments, will transform the challenges faced worldwide today into opportunities for a brighter future of work.



## Djibouti

### Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1 of the Convention. Adoption and implementation of an active employment policy. ILO technical assistance.* In response to previous comments, the Government indicates in its report that, although the strategy for the formulation of a national employment policy was commenced in April 2003, and new structures have been established, the preparation of a national employment policy paper has still not been completed. The Committee notes that the National Employment Forum held in 2010 showed the need to develop a new employment policy adapted to labour market needs, which will have to target as a priority the reform of the vocational training system and the improvement of employment support services. The Government indicates that, out of a population of 818,159 inhabitants of working age, recent estimates place the unemployment rate at 48.4 per cent. It also indicates that, following a mission for the evaluation of technical cooperation undertaken by the ILO in March 2011, the Government reiterated its commitment to developing a Djibouti Decent Work Programme. It adds that it is still awaiting Office support for this purpose. ***The Committee requests the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies, and on the progress made in the adoption of a national policy for the achievement of full employment within the meaning of the Convention.***

*Youth employment.* The Government indicates that in 2012, despite a certain improvement, unemployment particularly affected young persons with higher education degrees. Moreover, although the country does not currently have a formal strategy to promote youth employment, several initiatives have been established to improve the operation of the labour market, promote entrepreneurship and provide training adapted to labour market needs. ***The Committee invites the Government to provide information on the manner in which the measures adopted have resulted in productive and lasting employment opportunities for young persons, and on the collaboration of the social partners in their implementation.***

*Article 2. Collection and use of employment data.* In March 2014, the Government provided the summary of the employment situation prepared by the National Employment and Skills Observatory. The number of jobs is increasing (30,118 jobs created in 2007, 35,393 in 2008 and 37,837 in 2010). ***The Committee invites the Government to indicate the measures taken to improve the labour market information system and to consolidate the mechanisms linking this system with decision-making in the field of employment policy. It also requests the Government to provide updated statistical data disaggregated by age and sex, as well as any other relevant data relating to the size and distribution of the workforce, the nature and scope of unemployment and underemployment and the respective trends.***

*Article 3. Collaboration of the social partners.* ***The Committee recalls the importance of the consultations required by the Convention and once again requests the Government to provide information on the measures adopted or envisaged for the consultation of the representatives of the persons affected on employment policies.***

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

# Ireland

## Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Articles 1 and 2 of the Convention. Employment policy measures. Impact of COVID-19.* In its previous comments, the Committee requested the Government to provide information on the impact of the employment measures taken under its twin key strategies: the Action Plan for Jobs and Pathways to Work 2016–20. It also requested the Government to continue to provide information on the procedures for deciding on and reviewing employment measures implemented within the framework of an overall economic and social policy. The Committee notes with ***interest*** that the Action Plan for Jobs has delivered strong job growth. In its supplementary report the Government indicates that as of the first quarter of 2020, total employment had grown to 2,353,500, representing 490,300 more people in employment since the Action Plan for Jobs was first launched in 2012. The Committee further notes that these are the highest employment figures ever recorded in the country and significantly above the Government's 2020 target of 2.1 million. The Government indicates that the unemployment rate, which peaked at almost 16 per cent in 2012 had fallen to 4.7 per cent in the first quarter of 2020 and long term unemployment had fallen to 1.2 per cent, well below the target of 2.5 per cent set out in Pathways to Work 2016–2020. The Committee notes that the Government's policies had increased the employment rate by over 15 per cent in all eight regions from the first quarter of 2012 to the first quarter of 2020. The Committee further notes that the targets set in the Programme for Government in 2016 for the creation of 200,000 additional jobs by 2020, including 135,000 jobs outside of Dublin, had been exceeded with jobs created totalling 272,700. The Government indicates that the impact of COVID-19 on Ireland's economy is evidenced in the Labour Force Survey figures for the second quarter of 2020, which indicate that employment decreased by 149,800 (-6.3 per cent), bringing total employment down to 2,222,500. The Committee notes that a new Programme for Government was introduced in June 2020, setting a new target to create 200,000 additional jobs by 2025. With regard to the procedures for deciding on and reviewing employment measures implemented, the Government indicates that a set of milestones and metrics are used as indicators of progress in addressing the challenges and delivering on Pathways to Work 2016–2020. Progress on milestones are presented quarterly to the Cabinet Committee, and metrics are published on the Department website and reviewed and updated on an annual basis to reflect the key challenges and issues being addressed under this strategy each year. The Committee notes from the supplementary information provided by the Government that the majority of activities under Pathways to Work 2016–2020 have now been completed and reflect the much different economic landscape resulting from the COVID-19 pandemic. In this respect, the Government indicates that the Department of Employment Affairs & Social Protection (DEASP) is developing a successor strategy for the period 2020–25, aimed at ensuring that positive labour market outcomes are achievable for all groups in Irish society and that the Irish labour force is well positioned to respond to ongoing and future economic challenges. The Government further indicates that the DEASP will continue to review its labour market activation programmes to ensure that they remain aligned to labour market needs. The Labour Market Advisory Council is expected to remain an important component of the recovery process, providing guidance on the active labour market policy responses required to address the economic challenges that Ireland is facing over the immediate and longer term. ***The Committee requests the Government to continue to provide detailed updated information, including statistical data disaggregated by sex, age, region and economic sector on the impact of the COVID-19 pandemic on employment, unemployment and visible underemployment and on measures taken or envisaged to address the challenges encountered. The Committee further requests the Government to provide information on the implementation and outcomes of the new Programme for the creation of 200,000 additional jobs by 2025. The Government is further requested to provide updated information on the development, implementation and impact of the employment strategy for the period 2020–2025.***

*Education and training policies and programmes.* The Committee had previously requested the Government to provide information on the impact of the Action Plan for Education, the National Skills Strategy 2025, and the Further Education and Training Strategy 2014–19. The Government indicates that the annual review of the Action Plan for Education registers an achievement rate of 85 per cent for 2018, rising to 86 per cent in the first quarter of 2019. The key achievements of the Action Plan from 2018 to 2020 include: the establishment of the Technological University Dublin; an employer satisfaction survey, as well as the roll-out of 11 new apprenticeship programmes in 2019 and three in 2020. The Government indicates that through the Action Plan to Expand Apprenticeship and Traineeship for the period 2016–20, the number of apprenticeship programmes has grown from 25 to 58 with a further 20 in development. The pathways to participation in Apprenticeship has also been reviewed to ensure that the national apprenticeship system is more inclusive of diverse backgrounds and is accessible to all. In addition, the Government launched a national apprenticeship jobs platform in 2019 (www.apprenticeshipjobs.ie) and a

national promotional campaign, Generation Apprenticeship, was created to promote apprenticeship participation and opportunities at local, regional and national levels. The Committee notes that the number of employers engaging with the apprenticeship system increased from 3,558 in 2015 to over 6,000 in 2019 and that annual new apprentice registrations grew from 3,153 to 6,177 between 2015 and 2019. The Government indicates that the COVID-19 has impacted recruitment into apprenticeship programmes, with recruitment being reduced by 60 per cent as of mid-2020. A time-limited Apprenticeship Incentivisation Scheme for employers of apprentices has been introduced whereby a €3,000 grant is paid over a two-year period for each new apprentice who is registered between 1 March and 31 December 2020 and retained into the third quarter of 2021. With regard to the National Skills Strategy 2025, the Government indicates that the level of adult participation in lifelong learning in Ireland increased from 6.9 per cent in 2016 to 12.6 per cent in 2019. A National Skills Council as well as an Expert Group on Future Skills Needs (EGFSN) have been established to advise the Government on future skills requirements and associated labour market issues that may impact the national potential for employment growth. The Government adds that nine Regional Skills Fora have been established to engage employers, enterprises and education and training providers at the regional level to tailor responses to skills needs. These Fora engaged with over 1,498 enterprises in 2019, 75 per cent of which were small, medium and micro-enterprises. The Committee notes the implementation of the Further Education and Training Strategy 2014–2019 (FET), which resulted in significant progress in education and which is periodically assessed and reviewed. The Government indicates that as a part of Budget 2018, the rate of the National Training Fund (NTF) levy has been increased (by 0.1 per cent in 2018 to 0.8 per cent and by a further 0.1 per cent in both 2019 and 2020) and a reform package, developed in consultation with employers, has been attached to the fund to make it more responsive to employers' needs. The Government further indicates that as part of the reform package various policies and programmes, such as *Skills to Advance*, *Springboard+* and Skillnet Ireland have been implemented to promote the upskilling and reskilling of the current workforce. The Committee notes that *Skills to Advance*, which is an employee development policy framework, enables targeted support for groups in vulnerable situations in the Irish workforce, with a particular focus on those with lower skills levels. It also supports small and medium-sized enterprises in developing their workforce. The Committee further notes that the Government has also initiated the Skill to Compete programme in response to the urgent need for activation, upskilling and reskilling of workers who have been displaced from their jobs as a result of COVID-19. It will provide for 19,000 additional full time and part time places, prioritizing placement of persons who have lost their jobs as a result of the pandemic. The Government anticipates that a period of at least 18 months will be required to fully address the labour market disruption caused by COVID-19. ***The Committee requests the Government to continue to provide detailed updated information, including statistics disaggregated by age and sex, on the impact of the Action Plan for Education, the National Skills Strategy 2025, the apprenticeship programmes and other relevant measures, in terms of enabling young people, women and persons belonging to disadvantaged groups to secure lasting employment. The Committee further requests the Government to provide information on the impact of upskilling and reskilling initiatives and programmes, such as the Skill to Compete and Springboard+ 2020 programmes, on persons who have lost their jobs as a result of COVID-19 and on employment trends.***

*Article 3. Consultations with the social partners*. In its previous comments, the Committee requested further information on the activities of the Labour Employer Economic Forum (LEEF) with respect to the development, implementation and review of coordinated employment policy measures and programmes and their links to other economic and social policies. In its supplementary information, the Government indicates that, in response to COVID-19, the national Return to Work Safely Protocol was introduced in May 2020. It is designed to support employers and workers in putting measures in place to prevent the spread of COVID-19 in the workplace. The initiative was jointly led by the Department of the Prime Minister (the *Taoiseach*), the Department of Business, Enterprise and Innovation and the Health and Safety Authority. The Protocol was developed and adopted following discussion in the LEEF, as the forum for high-level dialogue between the Government, trade unions and employer representatives on matters of strategic national importance. The Committee notes that a sub-group of the LEEF has been established to oversee the implementation of the Protocol across Ireland, in parallel with existing occupational health and safety statutory requirements. ***The Committee requests the Government to continue providing examples of the participation of the social partners in the development, implementation and review of measures adopted to promote full, productive and freely chosen employment, including measures aimed at overcoming the profound impacts of COVID-19 on the labour market.***

## Japan

### Employment Policy Convention, 1964 (No. 122) (ratification: 1986)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee examines the application of the Convention on the basis of the supplementary information received from the

Government this year (see section concerning the COVID-19 pandemic), as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations made by the Japanese Trade Union Confederation (JTUC–RENGO), transmitted by the Government together with its report. The Committee also notes the observations of the Japan Business Federation (NIPPON KEIDANREN), transmitted by the Government together with its report and supported by the International Organisation of Employers (IOE). It further notes the Government's reply to the observations of the Japan Postal Industry Workers' Union (YUSANRO) of 2016.

*COVID-19 pandemic. Socioeconomic impacts. Response and recovery measures.* The Committee notes the serious social and economic impact of the COVID-19 pandemic at the national and local levels, as well as the measures taken by the Government to mitigate it. The Committee notes that a Declaration of a State of Emergency was issued on 7 April 2020, which was subsequently lifted in all prefectures on 25 May 2020. Several emergency response packages, representing over 20 per cent of Japan's gross domestic product (GDP), have been adopted to address the COVID-19 pandemic, protect the public and move towards economic recovery. In this framework, the Committee notes the information provided by the Government in its supplementary report concerning the broad range of measures adopted by the Government to protect employment and livelihoods. The Government refers to, among other measures: expanding special measures on the Employment Adjustment Subsidies until December 2020; launching a fund to support workers who are forced to leave work due to the impact of COVID-19 and are not able to receive allowances during this period; and providing assistance to businesses to ensure business continuity (such as cash payments to Small and Medium Enterprises (SMEs)) and financial subsidies to workers affected by school closures. The Committee notes that in its observations, JTUC–RENGO highlights that, taking into account the negative prospects concerning the impact of the pandemic, the expansion of the Employment Adjustment Subsidies should be implemented until at least March 2021. JTUC–RENGO points out that additional measures should be taken to encourage employers to retain workers. Recalling the comprehensive guidance provided by international labour standards, the Committee wishes to draw the Government's attention to the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), which provides guidelines for developing and implementing effective, consensus-based and inclusive responses to the profound socio-economic impacts of the pandemic. ***The Committee invites the Government to provide updated information in its next report on the impacts of the global COVID-19 pandemic and the measures taken, in consultation with the social partners, to address these impacts when implementing the programmes and measures aimed at ensuring the objectives of the Convention and the outcomes of these programmes and measures.***

*Articles 1 and 2 of the Convention. Employment trends and active labour market measures.* The Committee notes the Government's report received in August 2019, which includes detailed information in reply to its 2017 Observation. The Committee notes that the Government refers to the implementation of measures contemplated under the "*Long-term Vision for Overcoming Population Decline and Vitalizing the Local Economy in Japan*" and its accompanying comprehensive strategy which provides measures for the inclusion of persons with disabilities in the labour market. Furthermore, the Committee notes the adoption in 2018 of the "Act on the comprehensive promotion of labour policies" and the order for enforcement of such Act with a view to promoting a work-style reform allowing workers to choose different work styles depending on their personal circumstances. In December 2018, the Government also adopted the "Basic Guidelines for Labour Policies" which highlight the importance of effective utilization of workers' capabilities. The Government also indicates that, since 2018, the "counter for securing human resources" is the main public employment office providing job placement services, especially in those sectors facing serious labour shortages, such as social welfare, construction, security and transportation. In this respect, the Committee notes the statistical information, compiled from the Labour Force Survey of the Statistics Bureau and provided by the Government, regarding employment trends for the period 2016–2018. The data provided indicates that labour force participation has increased despite declines in the working age population. ***The Committee requests the Government to provide detailed updated information on the impact of the employment measures adopted, including the measures implemented under the Japan Revitalization Strategy, the Long-term Vision for Overcoming Population Decline and Vitalizing the Local Economy in Japan and the Basic Guidelines for Labour Policies. It also requests the Government to continue to provide updated detailed information, including statistics on employment trends, disaggregated by age, sex and economic sector. The Committee also reiterates its request to the Government to provide detailed updated information on the procedures for deciding on and reviewing employment measures implemented within the framework of an overall economic and social policy.***

*Article 3. Participation of the social partners.* In reply to the Committee's previous comments, the Government reiterates that the tripartite Labour Policy Council has deliberated on important matters concerning the enactment, amendment and enforcement of employment legislation and its opinions were taken into account in the planning and designing of employment policies. In its observations, NIPPON KEIDANREN indicates that it participated constructively in the formulation of the Basic Guidelines. The

Committee welcomes the Government's indication that consultations were also held with representatives of workers and employers directly affected by the employment policies developed, such as persons with disabilities, who were consulted in the framework of the Subcommittee for the Employment of Person with Disabilities under the Labour Policy Council. ***The Committee requests the Government to continue to provide information on the activities of the tripartite Labour Policy Council with respect to the development, implementation and review of employment policy measures and programmes, including those adopted to address the socioeconomic impact of COVID-19, and the manner in which they are coordinated with other economic and social policies. It also requests the Government to provide updated detailed information, including concrete examples of the manner in which representatives of those affected by the measures to be taken are consulted and their views taken into account in the development, implementation and review of employment policies and programmes.***

## Libya

### Employment Policy Convention, 1964 (No. 122) (ratification: 1971)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the information contained in the Government's report received in August 2020 in reply to the Committee's 2018 observation. The Committee takes note of the complexity of the situation prevailing on the ground and the armed conflict in the country.

***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)***

The Committee recalls the discussion that took place in the Conference Committee on the Application of Standards (CAS) at its 107th Session in May–June 2018 concerning the application of the Convention. Acknowledging the complexity of the situation prevailing on the ground and the presence of armed conflict, the CAS highlighted the impact and consequences of conflicts on poverty and development, decent work and sustainable enterprises, and recognized the importance of employment and decent work for promoting peace, enabling recovery and building resilience. Taking into account the Government's submission and the discussion in the CAS, the Committee requested the Government to provide information regarding updated statistics on the labour market, disaggregated by sex and age; information on the labour market strategy and the way in which employment objectives are to be achieved; information on progress made in the compilation and analysis of labour market data; and information on measures to promote the establishment and development of small and medium-sized enterprises (SMEs) as well as measures introduced to increase the participation in the labour market of persons in vulnerable situations. The CAS urged the Government to submit a detailed report to the Committee of Experts at its November 2018 session. It also urged the Government to avail itself of ILO technical assistance to adopt and implement without delay an active policy designed to promote full, productive and freely chosen employment, in consultation with the social partners. The CAS called on the ILO, the international community and employers' and workers' organizations to collaborate with the goal of reinforcing the labour administration system in Libya so that full, productive and freely chosen employment could become a reality in the country as soon as possible.

*Articles 1 to 3 of the Convention. Implementation of an active employment policy. Consultations with the social partners.* The Committee notes from the Government's report, as well as from the 2020 National Report submitted to the Working Group on Universal Periodic Review (the 2020 UPR report), that article 56 of the draft Constitution of Libya states that all citizens have the right to work and the Government strives to create job opportunities through stimulation of the economy, investment promotion and youth employment plans and programmes. The UPR report indicates that the Ministry of Labour and Rehabilitation has worked on the adoption of a package of practical measures to achieve these goals. These include the expansion of training programmes aimed at work in the private sector and of development projects. In addition, the Ministry of Labour is seeking to facilitate work and employment on development projects and in the construction sector, one of the most labour intensive sectors. In partnership with the private sector, the Ministry of Labour has identified a number of promising employment areas in new professions and is encouraging young people to receive training in these fields. In this respect, training initiatives on the use of solar and renewable energy and sea fishing, among others, have been rolled out (document A/HRC/WG.6/36/LBY/1, 18 August 2020, paragraph 42(b)–(d)). The Committee also takes note of the Libya Economic Monitor of the World Bank (WB) of July 2020, which indicates that the Libyan economy has recently been hit by four overlapping shocks: an intensifying conflict that suffocates economic activity; the closure of oil fields, which has placed the country's major income-generating activity largely on hold; decreasing oil prices that reduce income from oil production in surviving fields; and the COVID-19 pandemic, which threatens to further suppress the economy. The 2020 WB report emphasizes that the armed conflict and the blockade of the country's major oil ports and

terminals in January 2020 generated the most serious political, economic and humanitarian crisis faced by Libya since 2011. The economic impact had already been felt in 2019 as real GDP growth slowed sharply to 2.5 per cent down from a period of steady recovery during 2017–18. Moreover, the country is expected to suffer from a deep recession in 2020, with GDP projected to shrink by about 41 per cent. The Committee notes that the Government, referring to the special circumstances in the country, requests technical assistance from the Office. ***The Committee encourages the Government to take the necessary steps to avail itself of ILO technical assistance to enable it to develop, adopt and implement without delay an active national policy designed to promote full, productive and freely chosen employment, in consultation with the social partners. It requests the Government to provide detailed updated information on the measures taken and the progress made in this regard.***

*Article 2. Employment trends. Labour market information.* The Committee notes the estimates provided by the Government regarding employment trends in 2020, in reply to its previous comments According to the Centre of Information and Certification, the working population (aged 15 to 64 years old) is estimated at 4,750,000 (61 per cent of the total population), of whom 70 per cent make up the labour force. The Government adds that 86 per cent of the labour force is employed, while the remaining 14 per cent is seeking employment. In this regard, the Committee notes the statistical information provided by the Government on the number of jobseekers as of 23 March 2020, disaggregated by age, sex, qualifications and region. The Government reports that at that time there were 128,678 jobseekers (56 per cent women) registered in the 76 labour offices. The majority of these jobseekers are registered in the Western (55 per cent) and Central regions (27 per cent). ***Noting that the Government does not provide information on the nature or impact of measures taken to improve the labour market information system, the Committee reiterates its request in this regard. It also reiterates its request that the Government indicate the manner in which the labour market information obtained is used, in collaboration with the social partners, for the formulation, implementation, evaluation and modification of active labour market measures. The Committee further requests the Government to continue to provide updated statistics, disaggregated by sex and age, concerning the size and distribution of the labour force, the type and extent of employment, unemployment and visible underemployment.***

*Promotion of SMEs.* In reply to its previous comments, the Committee notes the Government's indication that the Ministry of Labour and Rehabilitation pays attention to the principle of partnership with the private sector, in compliance with the UN Sustainable Development Goals (SDGs). It also seeks to take different national initiatives in areas which strengthen capacity building in the Libyan labour market through measures and means which are suitable for this current phase. The Government refers to the implementation of several programmes and projects by the Financial Support Fund, reactivated under Decree No. 237 of 2018 of the Ministry of Labour, to create job opportunities for job seekers through promoting different economic activities, together with the social partners. In 2020, the Financial Support Fund formulated an operational plan of action under the general executive programme to fund economic projects. In addition, several memoranda of understanding (MoUs) regarding the funding of small and medium-size enterprises (SMEs) were concluded to activate the partnership between the private and public sectors with a view to increasing employment opportunities. ***The Committee requests the Government to continue to provide detailed updated information on the nature and the impact of the measures taken to create an enabling environment for sustainable enterprises, particularly for small and medium-size enterprises, as well as other entrepreneurship opportunities that can contribute to income-generation opportunities and generate employment.***

*Employment of women.* The Committee notes the Government's indication in its 2020 UPR Report that women make up a large proportion of the national workforce in all areas, and that this proportion is increasing annually. The Government states that, according to official statistics, women represent 37 per cent of the workforce, while the proportion of women working in leadership roles and in the judiciary has increased (document A/HRC/WG.6/36/LBY/1, paragraph 63). The Committee also notes the information provided by the Government with respect to the measures taken to increase the labour force participation rate of women, including in managerial and decision-making positions across all economic sectors. In particular, the Government refers to the establishment of the women's support and empowerment unit pursuant to Decree No. 210 of 2016. The Government adds that several women's empowerment units have been set up in various ministries. The Government also refers to a campaign aimed at combating violence against women with the participation of the Women's Support and Empowerment Unit. In the framework of this campaign, several recommendations were formulated, which are currently being carried out within the strategic plan of the Unit. The recommendations include establishing a 30 per cent quota of women in leadership positions, an obligation of providing a conducive environment for persons with special needs and women with disabilities in state institutions, a working group to conduct a study on violence against women in the work environment. Furthermore, the Government indicates that it envisages formulating policies aimed at increasing women's representation in political life, which remains weak. Lastly, the Government reports that, according to statistics issued by the Documentation and Information Centre on 17 June 2020, a total of 1,127,730 women were employed in the public sector. ***The Committee requests the Government to continue to provide detailed updated information on the nature***

***of the measures taken to increase the participation of women in the labour market, including in managerial and decision-making positions in both the public and private sectors. It also requests the Government to provide detailed updated information on the impact of such measures, including updated statistical data, disaggregated by age, sex and economic sector or occupation.***

*Persons with disabilities.* In its previous comments, the Committee requested the Government to provide updated detailed information on the impact of active employment measures taken to promote the employment of persons with both mental and physical disabilities. It further requested the Government to provide updated statistics disaggregated by age and sex, indicating the number of persons with disabilities employed in the public and private sectors. The Government refers to the implementation of the strategic objectives of the Persons with Disabilities Support and Empowerment Unit under the Ministry of Labour and Rehabilitation. The strategic objectives include the provision of training and rehabilitation to persons with disabilities and the establishment of effective communication mechanisms between employers and jobs seekers with disabilities. The Government also refers to, among other activities, the launching of awareness-raising campaigns on the rights of persons with disabilities addressed to the social partners and the creation of a database on persons with disabilities of working age. The Government reports that as of 2020, there are 236 persons with disabilities working in the public sector, of whom 68 are women. ***The Committee requests the Government to continue to provide detailed updated information, including statistics disaggregated by sex and age, on the nature and the impact of measures adopted or envisaged to promote the employment of workers with disabilities on the open labour market, and in particular measures aiming to increase the numbers and proportion of women with disabilities in employment.***

*Migrant workers.* The Committee notes the Government's indication that special efforts have been undertaken by the Ministry of Labour and Rehabilitation in collaboration with numerous countries to identify migrant and casual workers working in the informal economy, with a view to protecting their rights in conformity with international conventions. Moreover, the Government refers to the adoption of a national strategy for the development of human resources aimed at providing guidance and counselling to new migrant workers entering the Libyan labour market. The Committee notes that, in its 2019 concluding observations of 8 May 2019, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) noted that the Government is in the process of drafting a new labour law aimed at increasing protection of the rights of migrant workers and members of their families. The CMW nevertheless expressed concern about reports that migrant workers and members of their families, who are detained by the Directorate for Combating Illegal Migration, armed groups, smugglers or traffickers, are frequently subjected to forced labour. The Committee also expressed concern at the large number of reports of collusion and complicity of some representatives of State institutions with smuggling and trafficking networks. It also expressed concern that migrants in an irregular situation are frequently not paid for work performed, do not receive the amount of money agreed, or are denounced to the Directorate by their employers after having accomplished their work (document CMW/C/LBY/CO/1, paragraphs 12, 26 and 36). The Committee emphasizes that forced or compulsory labour, where it exists, is incompatible with the principle of freely chosen employment set out in *Article 1(3)* of the Convention. ***The Committee requests the Government to provide detailed information on the steps taken to address reported cases of abuse of migrant workers and their families, including those who are detained by the Directorate for Combating Illegal Migration. It further requests the Government to provide information on the progress made in drafting the new labour law aimed at increasing protection of the rights of migrant workers and their families and the development and adoption of any strategy addressed to tackle irregular migration, and to provide a copy once they are adopted. Finally, the Committee requests the Government to provide updated detailed information on measures taken or envisaged to promote the employment of migrant workers.***

*COVID-19 pandemic. Socioeconomic impacts. Response and recovery measures.* The Committee notes the supplementary information provided by the Government with respect to the response measures it has taken to mitigate the serious effects of the COVID-19 pandemic. The Government indicates that, based on a proposal put forward by the Presidential Council to address the impact of the pandemic, the Libyan-Korean Centre at the Ministry of Labour and Rehabilitation has turned the training line for sewing operators into a production line, under the supervision of the Women's Support and Empowerment Unit in the Ministry of Labour. The Centre manufactures protective masks and contributes to the manufacture of specialized medical apparel for hospitals and health centres in Tripoli and the Southern region. Moreover, the Government indicates that the Women's Support and Empowerment Unit has submitted a proposal for a contingency plan against COVID-19 to the Head of the Government of National Unity which proposes, among other measures, ensuring the availability of adequate food and medical supplies in all regions; and adopting urgent measures to provide support to displaced families and for groups in need of health and nutritional care and assistance. In this context, recalling the comprehensive guidance provided by international labour standards, the Committee wishes to draw the Government's attention to the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), which provides guidelines for developing and implementing effective, consensus-based and inclusive responses

to the profound socio-economic impacts of the pandemic. ***The Committee invites the Government to provide updated information in its next report on the impact of the global COVID-19 pandemic and the nature and impact of concrete measures taken to address it on the achievement of the objective of full, productive and freely chosen employment.***

## Madagascar

### Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* In its previous comments, the Committee expressed the hope that the Government would soon be in a position to report progress in the formulation and implementation of an employment policy. In this regard, the Committee notes with ***interest*** the Government's indications that Act No. 2015-040 of 9 December 2015 determining the orientation of the National Employment and Vocational Training Policy (PNEFP) has been adopted and is the subject of an awareness-raising campaign. It adds that the National Plan of Action for Employment and Training (PANEF) has been replaced by the Operational Plan of Action (PAO), which contains the various policy priorities implemented by the PNEFP. The Government indicates that the objective of the PNEFP, together with the implementation of the General State Policy (PGE), the National Development Plan (PND) and the Sustainable Development Objective (ODD), is to eradicate unemployment and underemployment by 2020 through the creation of sufficient numbers of formal jobs to absorb jobseekers. The PNEFP also has the goal of establishing a relevant information system on the labour market and vocational training and of designing and introducing a harmonized system of certification and training. The Government adds that four employment fairs were organized in December 2015 and that 1,119 young school-leavers were trained and integrated into small-scale rural occupations within the context of a partnership with UNESCO. Also in relation to employment promotion, the Government reports two "Rapid Results" initiatives of the Ministry of Employment, Technical Education and Vocational Training (MEETFP), which it indicates have been fully achieved. The first initiative focused on the matching of training and employment in 12 growth sectors. The second established a vocational training centre in the town of Andranofeno Sud with a view to employment generation. The centre provides training to around 100 students in six main areas: tourism, hotels and catering, agriculture and livestock, wood art and trades, automobile mechanics, construction and public works. The Government adds that 1,058 rural young school-leavers have been trained in 15 types of trades in several regions and that 59 persons with disabilities were trained by the National Training Centre for Persons with Disabilities (CNFPPSH) in the regions of Analanjirofo and Sava. The National Employment and Training Observatory has been transformed into the National Employment and Training Office. With regard to the upgrading of technical education and vocational training, the Government reports the rehabilitation in 2015 of five technical and vocational schools, 60 classrooms and the accreditation of 97 public and private technical establishments. The Government adds that four vocational training centres for women are now operational. ***The Committee requests the Government to continue providing information on any developments relating to the implementation of the National Employment and Vocational Training Policy, as well as on its impact on the employment rate and the reduction of unemployment, and on the transition from the informal economy to the formal economy. The Committee once again requests the Government to provide information to enable it to examine the manner in which the main components of economic policy, in such areas as monetary, budgetary, trade or regional development policies, contribute "within the framework of a coordinated economic and social policy" to the achievement of the employment objectives set out in the Convention. The Committee also requests the Government to provide updated information on the measures adopted or envisaged to create lasting employment, reduce underemployment and combat poverty, particularly for specific categories of workers, such as women, young people, persons with disabilities, rural workers and workers in the informal economy. In this regard, it requests the Government to provide further information on the types of training provided by the CNFPPSH to persons with disabilities.***

*Coordination of education and training policy with employment policy.* The Committee notes with ***interest*** that, under the terms of section 2 of the PNEFP, its objective is the implementation of a policy for massive job creation and the promotion of vocational training. Section 10 of the PNEFP specifies that the policy includes in particular activities for employment creation, enterprise support, labour market mediation, the direct promotion of employment for young persons, women and vulnerable categories, the promotion of decent work and the extension of social security. In section 5, it establishes the right to training and qualifications irrespective of a person's individual and social situation and educational level. The Committee further notes that section 46 calls for the creation of partnership between the State, territorial communities and technical and financial partners with a view to launching and financing employment promotion action for young persons, women and disadvantaged categories of workers. The Government indicates that the action taken for youth employment includes, on the one hand, the promotion of self-employment and traditional or informal enterprises and, on the other, support for integration into enterprises and traditional activities. The objectives of this action include support for young persons in their vocational projects and the reinforcement of financing capacities. The Ministry provides training to young persons with a view to promoting self-employment and the creation of small and medium-sized enterprises and industry. During the course of 2015 and the first half of 2016, training of this type was provided to 1,436 young persons from six regions. ***The Committee requests the Government to continue providing information on the results of the action taken to ensure the coordination of vocational education and training policy with employment policy. It once again requests the Government to indicate the results achieved through the implementation of these programmes in terms of the access of qualified young persons to lasting employment. The Committee further requests the Government to indicate the impact of the measures taken to promote the creation of small and medium-sized enterprises.***

*Compilation and use of employment data.* The Government indicates that the Periodic Household Survey was commenced and then replaced by the global population census in light of the State's priorities due to the significant increase in the population. However, it reports the preparation of a partnership project with the International Labour Office with a view to establishing a system of reliable databases on employment. The

National Employment and Training Office will be responsible for the management of the system. The Government adds that in 2016 the MEETFP started to establish Regional Employment Services (SRIE) in Regional Departments, and that there are now SRIEs in nine Regional Departments and that they are responsible for managing the regional employment information system, which involves matching young jobseekers and enterprises. ***The Committee requests the Government to provide information on the progress achieved by the project in the establishment of a system of reliable databases on employment. It also requests the Government to provide further information on the impact of the SRIEs in relation to the compilation and use of employment data.***

*Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government indicates that a National Agreement on Employment and Vocational Training was concluded with the social partners in October 2015 and with enterprise groups in the five priority areas in November 2015. The Government also reports the conclusion of two other agreements including the social partners, namely the agreement on the financing of the Technical Support Team for the PNEFP and the agreement on the fund for its implementation. ***The Committee requests the Government to continue providing updated information on the consultations held with the representatives of the social partners on the subjects covered by the Convention. The Committee once again requests the Government to provide detailed information on the consultations held with the representatives of the most disadvantaged categories of the population, and particularly with the representatives of workers in rural areas and the informal economy.***

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

## Mauritania

### Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1964)

The Committee notes the Government's report. It also notes the observations of the Free Confederation of Mauritanian Workers (CLTM), received on 12 June 2019, as well as the information provided by the Government in reply to these observations, received on 21 October 2019.

*Part II of the Convention Progressive abolition of fee-charging employment agencies conducted with a view to profit.* In its observations, the CLTM alleges a lack of transparency in the recruitment of workers by employment agencies conducted with a view to profit, indicating that intermediary structures, such as unofficial employment agencies, benefit from the indifference or even complicity of the authorities and allow for workers to be deceived. The CLTM mentions, in particular, domestic servants who were allegedly mistreated, abused and regarded as slaves after being recruited by an employment agency to work in the Kingdom of Saudi Arabia. The Committee notes that the Government is silent on the CLTM's observations alleging that women domestic workers recruited by an employment agency to work in the Kingdom of Saudi Arabia have been subjected to conditions akin to slavery. In this regard, the Committee notes the concerns expressed by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, at its 308th meeting concerning the consideration of the initial report of Mauritania that, according to the information available to the Committee, "around 900 women working in the Gulf countries are victims of trafficking" (CMW/C/SR.308, 11 April 2016, paragraph 7; see also the Concluding observations on the initial report of Mauritania, CMW/C/MRT/CO/1, 31 May 2016, paragraph 30). ***The Committee requests the Government to provide its comments with respect to the observations made by the CLTM in respect of domestic workers recruited to work abroad.***

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

## Mozambique

### Employment Policy Convention, 1964 (No. 122) (ratification: 1996)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy.* The Committee notes with ***interest*** that following ILO technical assistance, Mozambique adopted a National Employment Policy (NEP) in 2016. The NEP's principle objectives are: to promote job creation, entrepreneurship and sustainable employment to contribute towards the economic and social development of the country and the well-being of the population. The NEP includes, among its main targets, the creation of new jobs (particularly in the private sector); implementation of programmes contributing to increased productivity, competitiveness and the development of human capital; establishment of the institutional conditions necessary to improve the functioning of the labour market; and ensuring the harmonization of sectoral policies as well as an institutional framework for employment and self-employment. The Committee notes the publication of the Fourth National Poverty Assessment in 2016, which places the national poverty rates in the range of about 41 per cent to 45 per cent of the population (representing between 10.5 and 11.3 million extremely poor people). The report also states that, due to the concentration of Mozambique's workforce in subsistence agriculture and low productivity informal enterprises, the country is characterized by high levels of individual and household vulnerability, particularly in rural zones in the north and central areas of the country. ***The Committee requests the Government to provide comprehensive information on the results achieved and the challenges encountered in attaining the objectives established in the NEP, particularly on the outcome of the programmes established to stimulate***

***growth and economic development, raise working and living standards, respond to labour market needs and address unemployment and underemployment.***

*Article 2(a). Collection and use of labour market information.* The Committee notes the development of the Household Survey by the National Statistics Institute (INE) 2014–15. It observes that, according to statistical information included in the Employment Policy report, in 2015 the unemployment rate was 25.3 per cent. The main source of employment was self-employment (73.1 per cent of the economically active population (EAP)), while wage employment represented 20 per cent of the EAP. In addition, 15 per cent of the EAP was employed as unpaid family workers (8.5 per cent were men and 21 per cent were women), 7.3 per cent were temporary workers and 9 per cent were casual workers. The Committee also notes that the NEP calls for the improvement of the country's labour market information system. ***The Committee requests the Government to provide up-to-date information, including statistical data disaggregated by economic sector, sex and age, on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country.***

*Youth employment.* The Committee notes that the NEP's principal targets include promoting investment to create employment for young women and men and stimulating professional training and labour mobility for young people. To achieve these objectives the NEP sets out lines of action that call for promoting youth entrepreneurship through training programmes, particularly in rural areas, as well as increasing access to credit; investing in youth training and increasing the number of traineeships. The Government indicates that in 2015 awareness-raising conferences on Pre-occupational Traineeship Regulations were held at the national and provincial levels to encourage enterprises to engage trainees. In addition, the Government refers to the establishment of financial programmes to support entrepreneurial initiatives developed by young people. ***The Committee requests the Government to provide detailed information on the manner in which the implementation of the NEP, the Pre-occupational Traineeship Regulations and other programmes providing education and vocational training for young persons or supporting entrepreneurship of young women and men have increased access of young people to full, productive and sustainable employment.***

*Women's employment.* The Committee notes that the NEP calls for strengthened initiatives promoting gender equality in economic and social development programmes. The lines of action set out in the NEP include: promoting women's employment, including in traditionally male occupations; prioritizing education and vocational training with a view to promoting equal employment opportunities for women and men; and eliminating gender discrimination in access to employment. ***The Committee requests the Government to provide updated detailed information on the results of the specific measures adopted and implemented under the NEP to promote equal employment and income opportunities for women and men and to eliminate the gender gap in education, particularly in relation to literacy rates.***

*Education and vocational training.* The Committee previously requested the Government to provide information on the results achieved under the Employment and Vocational Training Strategy (EEFP) 2006–15 and the Integrated Programme for Vocational Education Reform (PIREP). The Committee notes from the Employment Policy report that access to secondary education is limited and the completion rate remains very low at 13 per cent. The report adds that the relevance of education and vocational training to the needs of the labour market is also very low. The Government indicates that reforms have been introduced in the areas of education and vocational training to address these challenges. In particular, the Government refers to the adoption of the Vocational Education Law in the framework of the PIREP, which provides that the National Authority for Vocational Training, whose executive board includes representatives of the social partners, is the body responsible for the Vocational Training System. Moreover, vocational training centres and technical institutes in the country have been renovated. Finally, the Government indicates that in 2014, in the framework of the EEFP, 2,490,672 jobs (464,413 for women) were created and 633,971 people participated in the training (219,260 women). ***The Committee requests the Government to continue to provide information, including statistical information disaggregated by age and sex, on the impact of the measures taken in the area of education and vocational training and on their relationship to prospective employment opportunities.***

*Article 3. Consultations with the social partners.* The Committee notes that, prior to its adoption, the NEP was examined by the social partners within the Labour Advisory Commission in May 2016. Moreover, the Employment Policy establishes that the Labour Advisory Commission and the Development Observatory are the bodies entrusted with the responsibility of following up on the implementation of the NEP. ***The Committee requests the Government to continue to provide detailed information on the involvement of the social partners in the promotion and implementation of the NEP.***

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

# New Zealand

## Employment Service Convention, 1948 (No. 88) (ratification: 1949)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations made by Business New Zealand (BusinessNZ) and the New Zealand Council of Trade Unions (NZCTU).

*Articles 1 and 3 of the Convention. Contribution of the employment service to employment promotion.* In its previous comments, the Committee requested the Government to continue to provide information on the measures taken to achieve the best possible organization of the employment market and the results of the measures implemented, including the impact of the welfare reforms on the quality of

employment services and employment promotion. The Committee notes that the Government reiterates its commitment to improving well-being and living standards in the country, including through the development of an Economic Strategy and an Employment Strategy, the latter setting out the Government's vision for the labour market and providing a roadmap for a series of action plans focused on improving employment outcomes for population groups experiencing poor labour market outcomes (Māori, Pacific people, youth and persons with disabilities). Consultations on the reform to the vocational education and welfare systems have started in 2019 and the Ministry of Sustainable Development is currently working through the May 2019 recommendations of the Welfare Expert Advisory Group on resourcing and strengthening the provision of employment support through the welfare system. The Government further points to the Social Security Amendment Act (No. 2) 2015, as well as the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Act 2016, which uses community-based providers to deliver wrap-around support to help young people into work, education or training. It also informs about the functioning of several welfare programmes including the Mana in Mahi programme targeted towards young people aged between 18 and 24 years, as well as to the NEET service that is addressed to 16- and 17-year-olds that are not in education, employment or training. The Government highlights that its priority consists in supporting people to achieve meaningful and sustainable employment, while also recognising the value of unpaid work, such as caring for children and other family members and community-based volunteering. The Committee notes that in its supplementary report, the Government refers to several measures taken to respond to the economic impact of COVID-19, including wage subsidies accessible to the majority of employers, leave support and immediate access to benefits. The Government further indicates that the Regional Skills Leadership Groups established in 2019 have been supplemented with additional interim offices to ensure that the immediate labour market and skills needs of the regions are met.

The Committee further notes that BusinessNZ observes that Work and Income, the public employment service, is perceived by many employers as providing job applicants who are less qualified and reliable than those found elsewhere and that employers choose instead to advertise their own job vacancies. BusinessNZ also voices concerns as to the employability of individuals trained solely in training institutions and lacking on-site experience, pointing to problems inherent in the proposals to reform the education and training system. In its additional observations, BusinessNZ maintains that the manner in which wage subsidies have been established does not necessarily assist smaller employers in difficult situations as a result of the pandemic. The NZCTU expresses concern that the welfare reforms are focused on reducing the number of beneficiaries and not on the quality and sustainability of employment. It considers that more emphasis should be placed on a set of active labour market employment policies. In their additional observations, the NZCTU alleges that some employers might have used benefits without complying with labour legislation. ***In view of the concerns raised, the Committee requests the Government to provide updated detailed information on the nature and impact of measures taken to achieve the best possible organization of the employment market, particularly in the framework of the measures taken to address and mitigate the effects of the COVID-19 pandemic. The Committee also requests the Government to provide information on any measures taken or envisaged to render the public employment service more appealing to employers in the country, so as to ensure that the employment service contributes to the fullest extent possible to the achievement and maintenance of full and productive employment.***

*Articles 4 and 5. Cooperation of workers' and employers' representatives.* The Committee previously requested the Government to indicate the manner in which consultations are held with regard to the matters covered by the Convention. The Committee notes the Government's indication that advisory committees and working groups are set up for high-level projects. It welcomes the detailed information provided on the Welfare Expert Advisory Group (WEAG) established in May 2018 to provide advice and recommendations on the future of New Zealand's social security system in consultation with key stakeholder groups (Iwi and Māori, Pacific Peoples and persons with disabilities. The Government also refers to the consultation group for the temporary migrant worker exploitation review, composed of representatives from business, unions, migrants and international students, as well as to the New Zealand Disability Strategy Revision Reference Group, the majority of whose members are persons with disabilities. The Committee notes, however, that according to BusinessNZ, the WEAG seems to have focused more on the provision of social welfare than employment, with no direct employer input in the expert group. The NZCTU, for its part, acknowledges the establishment of the WEAG, but suggests that there are failures in implementing its recommendations. It also considers that more focus should be given to active labour market employment policies and commends the Government's efforts to set up a tripartite working group on the Future of Work. ***In view of the observations of the social partners, the Committee requests the Government to provide information on the implementation of the recommendations provided by the WEAG as well as information on the manner in which the Government cooperates with workers' and employers' representatives in the development of the employment service policy and other matters covered by the Convention.***

*Article 6(b)(iv) and (c). Migrant workers.* In its previous comments, the Committee requested the Government to provide information on the measures taken to facilitate any movement of workers from one country to another. The Committee notes the Government's indication that it has developed and proposed changes to immigration settings to ensure that the immigration system supports the country's economy and labour market, including better matching the skills needed with those available through immigration, ensuring that temporary work visas are granted for genuine regional shortages and investing in immigration compliance capability. The Government is currently considering changes to employer-assisted visas with focus on employers placing more nationals into jobs and ensuring that temporary migrant workers are not exploited in employment and have wages and working conditions consistent with national values. There is also an in-depth policy and operational review ongoing to better understand temporary migrant worker exploitation and identify impactful and enduring solutions, as well as many other initiatives related to migrant exploitation (increased immigration fees and levies, migrant sex workers research and the restoration of the right to prescribed rest and meal breaks for migrant workers through the 2018 amendment of the Employment Relations Act). The Government also informs that it has replaced the employer-assisted post-study work visa with a post-study work visa providing open work rights for international students of a certain qualification level. The Committee notes that in its supplementary report, the Government refers to the "Visitor Care Manaaki Manuhiri (Assistance for Foreign Nationals Impacted by COVID-19) Programme" that consists of in-kind assistance to migrant workers that experience serious financial hardship and are unable to meet their basic needs. Furthermore, the Government has allocated $50 million to address temporary migrant exploitation, as it is estimated that migrants are at increased risk during the pandemic. Measures include an improved system to report exploitation and an information and education action plan for migrants and employers on their rights and obligations.

The Committee notes the observations of BusinessNZ, indicating that the migrant worker situation is currently in a state of flux, with many employers unable to find the skilled or unskilled workers they need. It further suggests that while the Government's focus on employing nationals is understandable, migrant workers are urgently needed and accessing their skills is proving difficult given the current immigration delays. BusinessNZ adds that ,while more cases of migrant exploitation are currently before the courts, the majority involve migrant exploitation by migrant employers who are unfamiliar with or reluctant to observe the country's laws. BusinessNZ refers in its additional observations to the difficulties that employers have in finding workers in agriculture and horticulture, sectors that depend highly on immigration due to border restrictions. ***Taking due note of the information provided and in view of the concerns expressed by BusinessNZ, the Committee requests the Government to provide information on the impact of the immigration system reform on the movement of workers from one country to another and on the employment of migrant workers in practice particularly in the framework of the measures taken to address and mitigate the negative effects of the COVID-19 pandemic. The Government is requested to provide statistics on the employment situation of migrant workers, including those benefitting from a post-study work visa.***

***Finally, the Committee invites the Government to provide updated information in its next report on the impact of the global COVID-19 pandemic on the implementation of the measures taken or contemplated to give effect to the provisions of the Employment Service Convention, 1948 (No. 88).***

## Nigeria

### Employment Service Convention, 1948 (No. 88) (ratification: 1961)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 1 and 3 of the Convention. Contribution of the employment service to employment promotion.* The Committee notes with ***interest*** the adoption of the revised National Employment Policy (NEP) on 19 July 2017, which provides for a range of improvements to the employment service system. In particular, the Committee welcomes section 4.7.6 of the NEP, in which the Government undertakes to improve the collection, processing and analysis of employment statistics and other labour market information for purposes, inter alia, of improved employment and social development planning, and with the objective of establishing and maintaining functional and timely information regarding job vacancies, sectoral changes, geographical imbalances and other labour and income trends. The Committee further notes that, pursuant to section 4.7.7 of the NEP, the Government, through the Federal Ministry of Labour and Employment (FMLE), is to establish a minimum of two community employment centres (CECs) in all 744 local government areas in the country. The CECs are to provide a full range of employment services to jobseekers in rural and urban communities in the country, including training, referrals, career counselling and information on job vacancies. ***The Committee requests the Government to provide detailed information on the measures taken or envisaged to implement the provisions of the NEP and its accompanying employment matrix, relating to the structure and functioning of the employment service. The Committee also requests the Government to provide updated information, including statistical information disaggregated by age and sex, on the number and location of public employment offices, including the CECs established in the different areas of the country, the number of new staff recruited, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices. The Government is requested to indicate the manner in which the employment service, in***

***collaboration with other public and private bodies concerned, ensures the best possible organization of the labour market with a view to the achievement and maintenance of full, productive and freely chosen employment.***

*Articles 4 and 5. Consultations with the social partners.* The Committee notes the Government's indication that the social partners, along with other stakeholders, participated in the review and validation of the revised NEP and its accompanying implementation matrix prior to its adoption by the Federal Executive Council in July 2017. ***The Committee requests the Government to indicate the measures taken or envisaged to give effect to the provisions of Article 4, which requires arrangements to be made through one or more national advisory committees – and where necessary regional and local committees – for the cooperation of the social partners in the organization and operation of the employment service and the development of related policy. In this context, and referring once again to its previous comments, the Committee reiterates its request that the Government provide information on consultations held in the National Labour Advisory Board on the organization and operation of the employment exchanges and professional and executive registries, as well as on the development and implementation of employment service policies and programmes.***

*Article 6. Organization of the employment service.* The Government reports that some of the employment exchanges and the professional and executive registries in Nigeria have been upgraded to model job centres. It adds that the services provided by the exchanges have been upgraded and their facilities computerized, enabling them to replace manual registration of jobseekers with an electronic platform linked to the National Electronic Labour Exchange (NELEX), enabling jobseekers and employers to meet online and access employment services. ***The Committee requests the Government to provide updated detailed information, including statistical information on the impact of reorganization and restructuring of the employment services under the revised NEP. The Committee further requests the Government to provide up-to-date information on the operation of the job centres and their contribution towards meeting the needs of employers and workers, particularly in those regions of the country with high levels of unemployment. The Government is also requested to provide updated information in its next report on progress made regarding the establishment of CECs in all 744 local government areas of the country, as called for under the NEP, as well as on other measures taken or envisaged to respond to the needs of employers and workers in all geographical regions of the country.***

*Article 7. Particular categories of jobseekers.* The Committee welcomes the provisions in sections 4.7.3 and 4.7.4 in the revised NEP, in which the Government undertakes to develop and implement a range of measures to ensure the greater participation of women in the workforce and the full employability of persons with disabilities, respectively. In respect of the employment of women, the Committee notes that the federal and state Governments are to develop self-employment promotion programmes for women, especially in rural communities, and the Federal Ministry of Women's Affairs and Social Development, together with related state ministries and local government councils, shall establish mentorship programmes and gender-specific career counselling in the 744 local government areas (NEP, section 4.7.3). In relation to the employment of persons with disabilities, section 4.7.4 of the NEP provides, inter alia, that the Government will facilitate the passage of a draft law on persons with disabilities and establish vocational rehabilitation centres to develop and enhance the skills and potential of persons with disabilities. ***The Committee requests the Government to provide comprehensive updated information on measures taken to promote women's employment, particularly in rural communities, including information on the mentorship and gender-specific career counselling services provided in the local government areas, specifying the involvement of the employment service in this respect. The Committee further requests the Government to provide detailed information on measures taken or envisaged to give full effect to the provisions of section 7.7.4 of the NEP, including providing a copy of the law on persons with disabilities once it is adopted. The Committee recalls that the Government may avail itself of technical assistance with regard to the achievement of these objectives.***

*Article 8. Employment of young persons.* The Committee notes the focus in section 4.7.1 of the NEP on job creation for young persons, particularly in the agricultural sector. In particular, the Government contemplates providing temporary employment for 500,000 graduates annually in the areas of education, agriculture, health and taxes. ***Referring once again to its previous comments, the Committee requests the Government to provide detailed information on the impact of the measures taken by the employment service to assist young persons in securing suitable employment, as well as information on the impact of measures taken by the National Directorate of Employment and the National Poverty Eradication Programme in this respect. The Government is also requested to provide information on the specific measures taken to implement the provisions of the NEP on youth entrepreneurship – including training and facilitating access to credit, insurance and other financial services – and skills acquisition for unemployed youth. It further requests the Government to provide information on the specific services and activities offered by the employment service in relation to the achievement of the objectives set out in section 4.7.1 of the NEP of generating employment opportunities and promoting skills acquisition for young persons.***

*Article 10. Measures to encourage the full use of employment service facilities.* The Government indicates that private employment agencies (PEAs) are encouraged to advertise all job vacancies on the NELEX platform. In addition, it envisages taking steps to raise public awareness of the activities of the employment exchanges and the NELEX platform. ***The Committee reiterates its previous request that the Government provide detailed information on the measures taken or envisaged by the employment services, with the cooperation of the social partners, to encourage the full use of employment service facilities. The Government is requested to provide specific examples of activities conducted to reach out to the local workforce in various geographical regions of the country.***

*Article 11. Cooperation between public and private employment agencies not conducted with a view to profit.* The Committee notes the provisions of the NEP concerning the regulation of the activities of PEAs operating in the country. In particular, the Government, through the FMLE, undertakes to ensure adequate protection for the workers placed by such agencies. The Government reports that annual capacity-building workshops carried out with PEAs have strengthened existing cooperation between the employment service and PEAs. It adds that the workshops have resulted in improved compliance by PEAs with statutory provisions and have raised their awareness of decent work principles. ***The Committee requests the Government to continue to provide updated information on the measures taken or envisaged to ensure effective cooperation between the public employment service and PEAs not conducted with a view to profit, including information on the content and outcome of the annual capacity building workshops for such agencies.***

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

### Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 2010)

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

*Articles 1–4 of the Convention. National policy. Promoting opportunities in the open labour market for persons with disabilities.* The Committee notes that the Government's report fails to address most of the issues raised in its previous comments regarding the application of the Convention since its ratification. The Committee noted the Government's indications concerning a draft bill that was then before the National Assembly and which intended to ensure full integration of Nigerians with disability into society. Moreover, despite a comprehensive National Policy on the Rehabilitation of Persons with Disabilities, including implementation strategies, the Government states in a very brief report that it had ensured at least 2 per cent of the workforce for suitably qualified persons with disabilities; additionally, that letters of recommendations have been issued in order to enable persons with disabilities to be gainfully employed; that economic empowerment programmes have been organized, and that mobility aids and appliances have been distributed. Moreover, the Government indicates that it has endeavoured to ensure availability of vocational rehabilitation to all categories of persons with disabilities. ***The Committee renews its request for full information on the matters raised in its previous comments, particularly specific information on the status of the draft bill. The Committee requests the Government to provide full information on the implementation of the National Policy on the Rehabilitation of Persons with Disabilities. Please also provide relevant information on the application of the Convention, including statistical information disaggregated, as much as possible, by age, sex and nature of the disability, as well as extracts from reports and studies or inquiries on the matters covered by the Convention.***

*Article 5. Consultations.* ***The Committee once again requests the Government to describe in detail the manner in which representative organizations of employers and workers, and representative organizations of and for persons with disabilities are consulted in practice regarding the implementation of the vocational rehabilitation and employment policy for persons with disabilities.***

*Articles 7 and 9. Services for persons with disabilities. Qualified staff for persons with disabilities.* The Government indicates that it ensures that persons engaged in providing and evaluating vocational guidance, vocational training, placement, employment and other related services to persons with disabilities have adequate knowledge of disabilities and their limiting effects, as well as integrating them into active economic and social life. ***The Committee requests the Government to describe the measures taken or envisaged with a view to providing and evaluating vocational guidance and vocational training services for persons with all types of disabilities, and to indicate whether existing services for workers are being used with necessary adaptations. The Committee renews its request to the Government to provide further information on the number of persons trained and qualified staff made available to persons with disabilities.***

*Article 8. Rural areas and remote communities.* The Government indicates that, in rural and remote communities, trainable persons with disabilities are attached to local craftsmen such as tailors, hairstylists, barbers, vulcanizers. ***The Committee once again requests the Government to 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.***

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

## Sierra Leone

### Employment Service Convention, 1948 (No. 88) (ratification: 1961)

The Committee welcomes the Government's reply to the comments it has been making for many years in relation to the application of the Convention.

*Articles 3, 4 and 5. Contribution of the employment service to employment promotion. Consultation with the social partners*. The Committee recalls that, in its 2004 report, the Government indicated that it proposed to strengthen the employment services and that legislation in this regard had been included on the agenda of the Joint Advisory Commission for discussion. In its comments made initially in 2004, the Committee requested the Government to describe the manner in which the employment services reforms mentioned by the Government in its 2004 report, 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*). It also requested the Government to provide statistical information 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 these offices (Part IV of the report form). The Committee notes the information provided by the Government in respect of the functions of the Ministry of Labour and Social Security (MLSS), particularly in the areas of manpower planning and human resource development, developing and implementing employment and labour market policies, addressing the needs of disadvantaged groups and industrial training. The Committee further notes the Government's indication that there are six employment exchange centres in the country, but that there are insufficient resources to enable the establishment of additional centres. In addition, the Committee

notes the Government's indication that the Joint Consultative Committee, composed of workers', employers' and Government representatives, meets regularly at national level to discuss employment policy, in particular labour and employment issues. The Government does not provide information on the employment services reforms or the proposed legislation on employment services, nor does it provide the statistical information requested. ***The Committee therefore once again requests the Government to communicate updated detailed information with regard to the employment service reforms undertaken, including the development of relevant legislation, and the manner in which these reforms have contributed to the objectives set out in Article 1 of the Convention. It further requests the Government to provide updated statistical data 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. It also requests the Government to provide further details regarding the functioning of the Joint Consultative Committee (JCC). In particular, the Government is requested to provide updated detailed information in relation to consultations within the JCC concerning the development of employment services legislation and policy, as well as in relation to discussions held within the JCC with respect to the provisions of the Convention more generally. It also invites the Government to consider the possibility of establishing regional or local advisory committees as contemplated in Article 4(2).***

*Article 7. Particular categories of jobseekers.* The Committee notes the Government's indication that special preference is given to persons with disabilities in terms of shortlisting for certain positions. ***The Government is requested to provide information on the nature and impact of this measure, indicating the positions to which this preference is applied. The Committee further requests the Government to communicate information on any other measures taken to give effect to this Article of the Convention.***

*Article 11. Cooperation between the public employment service and private employment agencies.* The Government indicates that a coordination gap exists between the public employment service and private employment agencies. ***The Committee requests the Government to provide information on measures taken or envisaged at the national and regional levels to secure effective cooperation between the public employment service and private employment agencies not conducted with a view to profit.***

*Part V of the report form. Application in practice.* The Government reports that there are six employment exchange centres at regional level and that there has been a devolution of functions to these entities. The Government indicates that there are inadequate resources to permit establishing additional employment centres in the country, particularly in underdeveloped areas. The Committee notes that the Government does not provide information on the nature or impact of the employment services reforms to which it referred in its 2004 report, nor on the manner in which the employment services ensure "the best possible organization of the labour 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", as required under *Article 1* of the Convention. ***The Committee requests the Government to provide detailed updated information on the nature and impact of measures taken to ensure the establishment of a network of employment offices sufficient in number to serve each geographical area of the country. The Committee reminds the Government that it can avail itself of the technical assistance of the Office if it so wishes.***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 2** *(Morocco, Myanmar);* **Convention No. 88** *(Belize, Guinea-Bissau, Lebanon, Libya, Lithuania, Madagascar, Malaysia, Mauritius, Mongolia, Mozambique, Netherlands, Netherlands: Aruba, Caribbean Part of the Netherlands and Sint Maarten, Nicaragua, North Macedonia);* **Convention No. 96** *(Libya, Luxembourg, Mauritania);* **Convention No. 122** *(Barbados, Chad, China, Gabon, Greece, Guinea, Honduras, Iceland, Islamic Republic of Iran, Iraq, Israel, Japan, Lebanon, Mali, Mongolia, Montenegro, Netherlands, Netherlands: Aruba, Caribbean Part of the Netherlands and Sint Maarten, North Macedonia, Norway, Papua New Guinea, Saint Vincent and the Grenadines, Sri Lanka, Tajikistan);* **Convention No. 159** *(Lebanon, Madagascar, Mali, Malta, Mexico, Mongolia, Netherlands, North Macedonia, Norway);* **Convention No. 181** *(Mongolia, Morocco, Netherlands, North Macedonia).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 2** *(Mauritius)*; **Convention No. 96** *(Malta)*; **Convention No. 181** *(Mali)*.

# Vocational guidance and training

## Guyana

### Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1983)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Articles 2 and 6 of the Convention. Formulation and application of a policy designed to promote the granting of paid educational leave.* The Committee recalls that, for many years, it has been requesting the Government to provide information on the measures taken to give effect to the Convention. In its report, the Government provides summaries of court decisions relevant to the granting of paid educational leave in the public service sector. The Government indicates that training in the private sector is undertaken on the basis of a company's needs, such as succession planning, human resource needs and upgrading of technology, whereas training is implemented through scholarships in the public sector. Training is provided on the basis of the projected labour needs of the Government and training opportunities are advertised within the various Ministries and agencies as well as in national newspapers. The Committee once again recalls that the Convention requires the Government to formulate and apply a policy designed to promote, by methods appropriate to national conditions and practice and by stages as necessary, the granting of paid educational leave for the purpose of occupational training at any level, general, social and civil education and trade union education *(Article 2)* in consultation with the social partners *(Article 6)*. ***Noting that the information provided in the Government's report does not indicate the manner in which Article 2 of the Convention is given effect, the Committee requests the Government to indicate the content and scope of the policy to promote the granting of paid educational leave for the purposes specified in Article 2 of the Convention and to communicate the texts, including government statements, declarations and other documents, in which the policy is expressed. In addition, the Committee once again reiterates its request that the Government provide full particulars on the measures taken or envisaged in order to give effect to these provisions of the Convention.***

*Articles 5 and 6. Arrangements for paid educational leave through collective agreements. Consultation with the social partners.* The Committee notes the Government's indication that the National Tripartite Committee established in 1993 has constituted a subcommittee to deal with training and placement issues. It adds that there is no information available on the manner in which the public authorities, representative employers' and workers' organizations and institutions providing education or training have been consulted on the formulation and application of the national policy to promote the granting of paid educational leave for the purposes specified in the Convention. The Government states that the social partners make provision for some measure of paid educational leave in the private sector through the bargaining process. ***The Committee requests the Government to provide information on the arrangements to enable the participation of employers' and workers' organizations and institutions providing education or training in the formulation and application of the national policy for the promotion of paid educational leave for the purposes specified in Article 2 of the Convention.***

*Article 8. Non-discrimination.* The Government indicates that training under *Article 2(a)* includes training for apprentices and groups in vulnerable situations. In this regard, the Committee notes that the Industrial Training Act, Chapter 39:01, referenced in the Government's report, regulates apprenticeships, but that section 3(1) of the Act refers only to male apprentices *(boys)*. The Government does not provide information regarding training for groups in vulnerable situations. ***The Committee requests the Government to provide information, including statistical data disaggregated by sex, on the apprenticeship training opportunities available to boys and girls. Noting that section 3(1) of the Industrial Training Act could be interpreted to exclude girls, it also invites the Government to consider amending the Act to extend apprenticeships to both male and female apprentices. It also requests the Government to provide particulars regarding the measures taken to ensure that groups in vulnerable situations have access to paid educational leave.***

*Application of the Convention. Part V of the report form.* ***The Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied, including, for instance, extracts from reports, studies and enquiries, and statistics disaggregated by sex and age on the number of workers granted paid educational leave during the reporting period.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 140** *(Afghanistan, Belize, Guinea, Mexico, Netherlands: Aruba, Nicaragua, North Macedonia, United Republic of Tanzania);* **Convention No. 142** *(Afghanistan, Kenya, Lebanon, Mexico, Montenegro, Netherlands, Netherlands: Aruba, Nicaragua, North Macedonia, Tajikistan, United Republic of Tanzania).*

# Employment security

## Cameroon

### Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)

The Committee notes the information contained in the report of the Government received in September 2020.

The Committee also notes the observations of the General Union of Workers of Cameroon (UGTC), received on 6 November 2020. ***The Government is requested to provide its comments in this regard.***

*Article 2 of the Convention. Categories of workers excluded.* In its reply to the Committee's previous comments, the Government indicates that with the exception of public servants governed by the General Public Service Regulations, a worker is any person working under the authority of an employer in exchange for remuneration and is protected by the Labour Code of 1992. In its observations, the UGTC asserts that men and women domestic workers are often subject to wrongful dismissal. ***The Committee once again requests the Government to provide copies of the legislative texts that apply to domestic workers in relation to the Convention. The Committee also requests the Government to provide detailed information on the manner in which it ensures adequate protection in the spheres covered by the Convention to workers in the informal economy. The Committee requests the Government to indicate whether the conditions of employment of public servants afford those concerned protection at least equivalent to that provided for in the Convention.***

*Article 8. Procedure of appeal.* In its previous comments, the Committee noted the observations of the Cameroon United Workers Confederation (CTUC), which considered that the terminations of workers in certain enterprises were not in conformity with the procedure established under national legislation, since no authorization for termination had been sought or granted by the labour inspector. The Government reiterates that the procedure for the dismissal of workers is established in section 34(1) of the Labour Code and the implementing regulations thereto and indicates that field labour inspectors ensure compliance with this provision day and night. The UGTC alleges that although the Government claims that labour inspectors conduct inspections day and night, labour inspectors do not carry out monitoring at night, even though they are allowed to do so by law. Furthermore, according to the UGTC, inspectors wait until complaints from workers reach them before instituting conciliation procedures instead of carrying out preventive monitoring in enterprises. ***The Committee requests the Government to provide information on the application in practice of this Article, including with regard to the procedure for the authorization of terminations.***

*Article 11. Notice period.* In its previous comments, the Committee noted the observations of the CTUC indicating that, in practice, employers terminate the employment of workers without observing the obligation to give a notice period as established by section 34(1) of the Labour Code. The Government refers once again to section 34 of the Labour Code and Order No. 15/MTPS/SG/CJ of 26 May 1993 determining the conditions and duration of the notice period, taking into account the seniority and occupational classification of the worker. The Government indicates that in the event that this provision is violated, the party that feels aggrieved may refer the matter to the labour inspectorate, which, during conciliation, endeavours to reach a solution. The Committee notes that the report of the Government does not reply to the observations of the CTUC. ***The Committee therefore reiterates its request to the Government to indicate the manner in which it is ensured that workers are provided with reasonable notice of termination.***

*Article 12(3). Definition of serious misconduct.* In its previous comments, the Committee noted that serious misconduct was not defined by the Labour Code but by case law. It notes the Government's indication that serious misconduct is defined in the internal regulations of enterprises and that, in the event of a dispute, the labour inspectorate is sufficiently competent to arbitrate. Nevertheless, in its previous comments the Committee noted the observations of the CTUC that, in national practice, the employer unilaterally defines the degree of seriousness of the misconduct, whereas under Cameroonian law only the judge is empowered to do so. ***The Committee requests the Government to clarify the question of the definition of serious misconduct in practice. It also reiterates its request to the Government to provide examples of judicial decisions which allow an evaluation of the application of Article 12(3) of the Convention in practice, and the courts' assessment of "serious misconduct".***

*Articles 12–14. Severance allowance. Consultation of workers' representatives. Terminations of employment for economic, technological, structural or similar reasons*. In its previous comments, the Committee requested the Government to indicate whether the dismissed workers had been paid their severance allowance and to provide information on all measures taken to alleviate the adverse effects of dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). The Committee noted that section 40(3) of the Labour Code establishes an obligation for the employer to call a meeting of staff delegates and the labour inspector to try to avoid

any termination on economic grounds. It also noted that section 40(9) of the Labour Code provides that any worker whose employment has been terminated shall be given priority status, where skill levels are equal, for two years with regard to recruitment in the same enterprise. The Government indicates in its report that in order to alleviate the adverse effects of dismissals for economic reasons, it encourages employers to use the measures contained in Paragraphs 25 and 26 of Recommendation No. 166. In its observations, the UGTC refers to the dismissal of 14,000 workers by a group of enterprises due the impact of the COVID-19 pandemic, indicating that neither the unions nor the government were notified prior to these dismissals. Furthermore, the UGTC alleges that some were dismissed without being paid their entitlements. ***The Committee once again requests the Government to send the Office a copy of Order No. 22/MTPS/SG/CJ establishing procedures governing terminations on economic grounds. The Committee requests the Government to provide detailed information on the application of these Articles of the Convention, and on the measures taken to alleviate the effects of dismissals for economic or similar reasons, such as those envisaged in Paragraphs 25 and 26 of Recommendation No. 166.***

*Application of the Convention in practice. COVID-19 pandemic.* The Government indicates that as a result of the COVID-19 pandemic, Cameroon recorded 14,000 dismissals for economic reasons in 2020. In reply to the Committee's previous request, the Government indicates that the Minister of Justice is awaiting the judicial decisions allowing an evaluation of the application of *Articles 4*, *5* and *7* of the Convention and that they will be submitted as soon as possible. It indicates that dismissal procedures were observed for enterprises whose managers were approached by labour inspection services. It informs the Committee that in the Centre and Littoral regions, the total number of conciliation reports is higher than that of partial conciliation and non-conciliation reports. ***The Committee requests the Government to continue to provide information on the application in practice of these Articles, including statistics on the activities of the appeal bodies and the number of terminations on economic grounds. Referring to its previous comments on valid and invalid grounds for termination and the defence procedure prior to termination, the Committee requests the Government to send examples of judicial decisions which allow an evaluation of the application of Articles 4, 5 and 7 of the Convention The Committee also requests the Government to provide detailed information on the impact of the global COVID-19 pandemic on the implementation of the Convention.***

## Papua New Guinea

### Termination of Employment Convention, 1982 (No. 158) (ratification: 2000)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 1 of the Convention.* For a number of years, the Committee has requested information concerning the ongoing revision of the Industrial Relations Bill which, according to the Government's 2013 report, includes provisions on termination of employment with the objective of giving effect to the Convention. In its reply to the Committee's previous comments, the Government indicates that the draft Industrial Relations Bill is still pending with the Department of Labour and Industrial Relations and is undergoing final technical consultations. The Government adds that the Department of Labour and Industrial Relations Technical Working Committee has carried out various consultations with national stakeholders, such as the Department Attorney General's Office, the Office of the Solicitor General, the Constitution Law Reform Commission, the Department of Personnel Management, the Department of Treasury and the Department of Planning, Trade Commerce and Industry, as well as with external technical partners, including the ILO. ***Referring to its previous comments, the Committee once again expresses the hope that the Government will take the necessary measures to ensure that the new legislation gives full effect to the provisions of the Convention. It also reiterates its request that the Government provide a detailed report to the ILO and a copy of the legislation as soon as it is enacted, so as to enable the Committee to examine its compliance with the Convention.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 158** *(Latvia, Montenegro, Niger, North Macedonia, Saint Lucia).*

# Wages

## Plurinational State of Bolivia

### Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1977)

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

The Committee notes the observations of the Confederation of Private Employers of Bolivia (CEPB) and the International Organisation of Employers (IOE), received on 26 April and 3 September 2019, as well as those of the International Trade Union Organization (ITUC) received on 1 September 2019.

***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)***

The Committee notes that based on its follow-up, in its last comments, of the conclusions of the Conference Committee on the Application of Standards (hereinafter Conference Committee) adopted in June 2018 on the application of the Convention, the Conference Committee examined the case for the second time in June 2019.

*Articles 3 and 4(1) and (2) of the Convention. Elements for the determination of the level of the minimum wage and full consultation with the social partners.* In its last comments, the Committee observed that while the Government stated that consultations were held with the social partners, the CEPB and the IOE claimed the opposite. The Committee also observed that there were divergences between the Government and the above-mentioned employers' organizations regarding the criteria reportedly taken into consideration in determining the minimum wage. In this context, the Committee expressed the firm hope that, in follow-up to the conclusions of the Conference Committee of June 2018, a direct contacts mission would take place without delay with a view to finding a solution to the difficulties faced in the application of the Convention. The Committee notes that, in 2019, the Conference Committee regretted that the Government had not responded to all the Conference Committee's conclusions in 2018, specifically the failure to accept a direct contacts mission. Therefore, in its 2019 conclusions, the Conference Committee once again urged the Government to: (i) carry out full consultations in good faith with the most representative employers' and workers' organizations with regard to minimum wage setting; (ii) take into account when determining the level of the minimum wage the needs of workers and their families, as well as economic factors as set out in *Article 3* of the Convention; (iii) avail itself without delay of ILO technical assistance to ensure compliance with the Convention in law and practice; and (iv) accept an ILO direct contacts mission before the 109th Session of the International Labour Conference. The Committee notes that the Government indicates in its report that: (i) a direct contacts mission is not necessary given that no difficulties are faced in the application of the Convention; (ii) the Bolivian Central of Workers (COB) annually presents a list of recommendations containing, among other issues, a proposal of increase in the national minimum wage; (iii) the same cannot be said of the CEPB, since Section 10 of its Statute provides that the confederation shall not assume the legal representation of its members, for the negotiation or settlement of individual labour disputes; (iv) nevertheless, the annual minimum wage increase takes into consideration the positions of workers and employers, with which the Government is promoting regular dialogue, based on good faith and respect, and consultation, as demonstrated by the round-table meetings established with the representatives of the CEPB and the COB; and (v) the determination of the national minimum wage level is based on economic and social factors taking into account inflation and productivity, as well as other economic indicators, inter alia, Gross Domestic Product (GDP), GDP per capita, the consumer price index, economic growth, unemployment rates, market fluctuations and the cost of living. Furthermore, the Committee notes that the CEPB and the IOE reiterate in their last observations, as they had done in the discussion in the Conference Committee, that: (i) the Government maintains dialogue and negotiates with workers' organizations, particularly with the COB, preventing the employers' sector to participate in consultations on the national minimum wage and to formulate proposals and criteria in this regard; and (ii) in fixing the minimum wage, the Government does not take into account objective technical criteria reflecting the economic reality of the country, such as productivity. Finally, the Committee notes that the ITUC, referring to the various social and economic factors taken into account in fixing the minimum wage, indicates that Bolivia is the country that has increased the minimum wage the most over the present decade in Latin America, without affecting the most relevant macroeconomic variables and without inflationary consequences.

The Committee observes that contradictions and divergences persist between the Government and the CEPB concerning the full and good faith consultations with the employers' representative organizations, and the criteria taken into account in determining the minimum wage. In this context, the Committee ***regrets*** to note the Government's refusal to accept a direct contacts mission to the country with a view to finding a solution to the difficulties faced in the application of the Convention. ***Recalling once again that these missions constitute an effective form of dialogue designed to find a positive solution to the issues in question, the Committee expresses the firm hope that the Government will review its position and that a direct contacts mission will take place before the 109th Session of the International Labour Conference, as requested by the Conference Committee.***

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

## Burundi

### Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), received on 24 August 2020, as well as the Government's reply.

*Article 3 of the Convention. Operation of the minimum wage-fixing machinery.* In its previous comments, the Committee recalled that the Labour Code provides that decrees issued by the Minister responsible for labour, after consultation with the National Labour Council (CNT), shall fix wage areas and guaranteed inter-occupational minimum wages (section 74(a)) and that the CNT shall be considering the elements that may serve as a basis for fixing the minimum wage and conducting an annual review of minimum wage rates (section 249(1)). In the absence of information showing that effect has been given to these provisions, the Committee requested the Government to take all the necessary measures to reactivate without delay the minimum wage review process and to provide information in this respect, as well as on the minimum wages applicable by category as fixed by collective agreements in the various branches of activity or in enterprises. The Committee notes the Government's indication in its report that the necessary measures to reactivate the minimum wage review process have been taken and, in this connection, a note will be sent to the social partners to put forward their views and proposals. It also notes that the COSYBU is calling on the Government to accelerate the minimum wage review process. In its reply, the Government indicates that: (i) the CNT examined this matter and it was considered necessary to prepare a study on the minimum wage; and (ii) the recruitment of a consultant to prepare the study and make concrete proposals was under examination. Finally, the Committee notes that the Government has not provided any information on the minimum wages applicable by category as fixed by collective agreements in the various branches of activity or in enterprises. Noting the lack of tangible progress made in activating the minimum wage-fixing machinery, established in sections 74 and 249 of the Labour Code, and the lack of information regarding the outcome of collective bargaining on the minimum wage, the Committee is bound to repeat its previous requests. ***It urges the Government to take all the necessary measures to reactivate without delay the minimum wage review process, as provided for in section 249 of the Labour Code, and to provide information in this regard, particularly on any decrees adopted further to this review, pursuant to section 74 of the Labour Code. It also once again requests the Government to provide information on the minimum wages applicable by category as fixed by collective agreements in the various branches of activity or in enterprises.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Guinea-Bissau

### Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1977)

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

*Article 3 of the Convention. Operation of the minimum wage-fixing machinery.* In its previous comments, the Committee recalled that the most recent decree fixing the minimum wage pursuant to sections 110 and 114 of the Labour Code was adopted in 1988 and that it was outdated. Noting that the Government indicated in its 2011 report that a study on the setting of a national minimum wage was being finalized, it requested the Government to provide information on any progress achieved in that regard. The Committee notes with ***regret*** that a new decree fixing the minimum wage has still not been adopted. It notes that the Government refers in its report to an agreement signed with the trade unions to conduct a study on fixing the national minimum wage. ***The Committee requests the Government to take without delay the necessary measures to fix the minimum wage pursuant to articles 110 and 114 of the Labour Code and to provide information in this regard, including on any studies carried out in this area and on consultation with the social partners.***

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

## Rwanda

### Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1962)

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

The Committee notes the observations of the Congress of Labour and Brotherhood of Rwanda (COTRAF–RWANDA) on the application of the Convention, received in 2018.

*Articles 1 and 3(2) of the Convention. Minimum wage-fixing machinery. Consultation of employers' and workers' organizations.* Further to its previous comments requesting the Government to take all necessary steps in order to accelerate the process of determining – in consultation with employers' and workers' organizations – minimum wage rates, the Committee notes that, despite the Government's previous indications that a draft law determining minimum wage rates was pending adoption, the Government once again refers in its report to a 2015 study on the matter and to ongoing consultations. The Government also refers to legislative revisions under way. The Committee notes that COTRAF–RWANDA emphasizes that there is still no appropriate minimum wage-adjusting mechanism in place to respond to the rising cost of living and inflation in the country. In this respect, the Committee notes the adoption of Act No. 66/18 of 30 August 2018 issuing the labour regulations of Rwanda (Labour Code), section 68 of which provides for the determination of the minimum wage through a decree issued by the competent minister. The Committee also notes that the National Labour Council is responsible for proposing, or issuing an opinion on, the determination and adjustment of minimum wage rates, under section 3 of Decree No. 125/03 of 25 October 2010. The Committee notes with ***regret***, however, that

according to information available, the new minimum wage rates have still not been determined and recalls that the last adjustment to these rates was in 1980. ***The Committee expresses the firm hope that the ministerial decree determining the minimum wage under section 68 of the new Labour Code will be adopted promptly, and requests the Government to take all necessary measures in this regard. In addition, it requests the Government to provide detailed information on the consultations held in this regard, including on the role played by the National Labour Council. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance.***

*Article 4. Sanctions.* The Committee notes that the Labour Code does not provide for sanctions in the case of non-respect of the provisions of national legislation concerning the minimum wage. ***The Committee requests the Government to ensure that the determination of the minimum wage rates will be coupled with the implementation of a system of sanctions in order to ensure that the wages actually paid are not lower than the minimum rates determined; and to provide information in this regard.***

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

## Uganda

### Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

*Article 3 of the Convention. Operation of the minimum wage fixing machinery.* The Committee recalls that, following the discussion of this case before the Conference Committee on the Application of Standards in June 2014, it had requested the Government to provide information with regard to the announced reactivation of the Minimum Wages Advisory Board and the subsequent fixation of a new minimum wage in the country. The Committee notes that the Government indicates in its report that a Minimum Wages Advisory Board was appointed in 2015 and that it undertook a comprehensive study of the economy with a view to providing advice to the Government on the feasibility of fixing a minimum wage in the country and the form that the minimum wage should take. The Government also indicates that the report of the Board was under discussion in the Cabinet. Despite the progress made with the reactivation of the minimum wage fixing mechanism in 2015, the Committee notes with ***concern*** that the minimum wage, which was last set in 1984, has yet to be adjusted. ***It therefore requests the Government to take the necessary measures to revise the level of the minimum wage without further delay. Recalling the importance of ensuring the close involvement of employers' and workers' organizations at all stages of this process, the Committee requests the Government to provide information on the composition of the Minimum Wages Advisory Board and on the consultations undertaken with the social partners in revising the level of the minimum wage.***

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

## Ukraine

### Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

### Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2006)

### Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) (ratification: 2006)

The Committee takes note of the joint observations of the Confederation of Free Trade Unions of Ukraine (KVPU) and the Federation of Trade Unions of Ukraine (FPU) on the application of Convention No. 95 (protection of wages) received on 29 September 2020, which refer to the continuing wage arrears situation in the country. The Committee notes that this serious issue is addressed in its pending comments on the application of that Convention.

The Committee also takes note of the observations of the FPU received on 30 September 2020 on the application of: (i) Convention No. 131 (minimum wage), which also refer to issues addressed in the Committee's pending comments on the application of that Convention, and (ii) Convention No. 173 (protection of workers' claims in case of the employer's insolvency).

The Committee further notes the observations of the International Trade Union Confederation (ITUC) regarding the application of Conventions Nos 131, 95 and 173 received on 16 September 2020, which also refer to issues addressed in the Committee's pending comments on the application of those Conventions.

***The Committee recalls that in 2019 it requested the Government to reply in full in 2021 to its comments on the application of Conventions Nos 131, 95 and 173. It requests the Government to also provide in its 2021 reports its comments on the observations of the KVPU, the FPU and the ITUC received in 2020.***

Not having received supplementary information from the Government further to the decision adopted by the Governing Body at its 338th Session (June 2020), the Committee reiterates its comments adopted in 2019 and reproduced below.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Convention No. 131 (minimum wage) and Conventions Nos 95 and 173 (protection of wages) together. The Committee takes note of the observations of the Confederation of Free Trade Unions of Ukraine (KVPU) on the application of Conventions Nos 95 and 131 received on 29 August 2019. It also notes the observation of the International Trade Union Confederation (ITUC) regarding the application of Convention No. 131 received on 1 September 2019.

## Legislative developments

In its last comments, the Committee noted that the draft Labour Code would replace both the Labour Code of 1971 and the Wages Act of 1995, which were the main pieces of legislation giving effect to the ratified Conventions on wages. It requested the Government to provide information on the progress made towards the adoption of the new legislation. ***Noting that the draft Labour Code has not yet been adopted, the Committee requests the Government to provide information on the finalization of the labour law reform***.

## Minimum wage

*Article 3 of Convention No. 131. Criteria for determining the level of the minimum wage.* The Committee notes that in their 2019 observations, the ITUC and the KVPU indicate that the minimum wage does not adequately take into account the needs of workers and their families and the cost of living. According to the ITUC, the minimum wage established for 2019 is 12 per cent lower than the subsistence minimum calculated by the Ministry of Social Policy, a benchmark which is not even adequate given that it does not factor in a number of household expenses. The KVPU also states that the Government has not considered the trade unions' suggestion to introduce a system of indexation to ensure that the minimum wage would not lose its value due to the rising inflation during the year. In addition, the KVPU notes that in setting the minimum wage the Government does not consider the overall level of wages in the country, leading to a significant gap between the minimum wage and the average wage. ***The Committee requests the Government to provide its comments in this respect.***

*Article 4(2). Full consultation with employers' and workers' organizations.* The Committee notes that the KVPU indicates that the negotiations on the determination of the minimum wage were not conducted in accordance with the procedure established by the applicable General Agreement. The KVPU also states that neither the Government nor the Parliament formally heard the position of the trade unions and that consequently the minimum wage results from a unilateral decision of the Government. ***The Committee requests the Government to provide its comments in this respect.***

*Article 5. Enforcement.* The Committee notes the KVPU's indication that proper inspections are not carried out due to the moratorium on inspections, and due to the lack of an appropriate number of inspectors. ***The Committee requests the Government to provide its comments in this respect. It also refers to its comments on the application of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).***

## Protection of wages

*Article 12 of Convention No. 95. Wage arrears situation in the country.* In its last comments, the Committee examined the situation of wage arrears in the country, a situation which was particularly prevalent in state-owned coal-mining enterprises. Further to these comments, the Committee notes the information provided by the Government in its 2019 report, including regarding the measures taken between 2017 and May 2019 for the payment of wages and wage arrears in state-owned coal-mining enterprises. On the other hand, the Committee notes with ***concern*** that, according to the information provided by the Government, the amount of wage arrears in the coal-mining industry has been increasing in the first months of 2019. It also notes that the 2019 observations from the KVPU refer to the continued wage arrears situation. The KVPU also reiterates that, as a result of lasting and systematic wage arrears, social tensions remain in the mining communities. The Committee wishes to emphasize once again that a situation in which part of the workforce is systematically denied the fruits of its labour cannot be prolonged and that priority action is therefore needed to put an end to such practices. The Committee recalls once again that the application of Article 12 in practice comprises three essential elements: (1) efficient control and supervision; (2) appropriate sanctions; and (3) the means to redress the injury caused, including fair compensation for the losses incurred by the delayed payment (see 2003 General Survey on the protection of wages, paragraph 368).

With regard to efficient control and supervision, the Committee notes that the Government indicates that since the beginning of 2019, labour inspectors have carried out inspection visits to determine compliance with labour legislation in eight enterprises in the coal industry. In six of these enterprises, 24 violations of legislation on labour, employment and compulsory state social insurance were discovered, some of which related to the payment of wages. On the other hand, the Committee notes that the KVPU reiterates its previous concerns indicating that the state bodies that control and supervise the application

of the relevant legislation do not substantively address the issue of wage arrears. ***The Committee requests the Government to take the necessary measures to ensure efficient control and supervision of the regular payment of wages in the country. It requests the Government to provide information in this regard and refers to its comments on the application of labour inspection Conventions Nos 81 and 129.***

With regard to the imposition of appropriate sanctions, the Committee notes the information provided by the Government, including the indication that in order to systematically resolve the problem of arrears in the payment of wages, the Ministry of Social Policy prepared draft amendments to the existing legislation with the aim of strengthening the protection of workers' rights to the timely payment of wages, including by increasing the amount of compensation to be paid in case of delayed payment of wages. The Committee notes that the KVPU indicates that at times employers pay a portion of the wage arrears to avoid administrative and criminal liability. ***The Committee requests the Government to provide information on any progress made in the adoption of measures to ensure that sanctions in case of non-payment or irregular payment of wages are appropriate.***

With regard to the means to redress the injury, the Committee notes the information provided by the Government, including the indication that according to the Court Fee Act, complaints submitted by physical persons for the recovery of wages are exempted from the payment of court fees. On the other hand, the Committee notes that the KVPU reiterates that workers have difficulties exercising legal remedies due to their poor legal awareness and to the cost of legal representation. The KVPU also states that most of the court decisions on the recovering of wage arrears have not been implemented. ***The Committee requests the Government to provide its comments in this respect. Moreover, noting that the Government indicates that the above-mentioned draft amendments prepared by the Ministry of Social Policy included the establishment of a mechanism to guarantee the payment of wages in arrears in cases of the employer's insolvency, the Committee requests the Government to provide information on the progress made in this regard.***

*The practice of "envelope wages".* In its last comments, the Committee requested the Government to provide information on the measures taken to eliminate the practice according to which workers are forced to agree to the undeclared payment of wages "in envelopes", resulting in the non-payment of the corresponding social contributions. The Committee notes that the Government indicates that the Ministry of Social Policy developed draft amendments to the existing legislation with the aim of counteracting the use of undeclared labour, taking into account successful international practices. ***The Committee requests the Government to provide information on the progress made in this regard.***

*Articles 5 to 8 of Convention No. 173. Workers' claims protected by a privilege.* Further to its previous comments, the Committee notes that section 64 of the 2018 Code of Bankruptcy Procedure provides that workers' claims arising out of the employment relationship shall be protected by a privilege and shall be satisfied on a first priority basis. ***Noting that section 2(4) of the Code of Bankruptcy Procedure excludes state-owned enterprises from its application, the Committee requests the Government to clarify how workers' claims are protected in the case of state-owned enterprises.***

### ILO technical assistance

The Committee notes that the country is receiving technical assistance from the Office on the issues raised in the present comments. ***The Committee hopes that the Government will be in a position to report concrete progress towards full and effective implementation of the ratified Conventions on wages in its next report.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Bolivarian Republic of Venezuela

### Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1944)

### Protection of Wages Convention, 1949 (No. 95) (ratification: 1982)

In order to provide a comprehensive view of the issues concerning the application of ratified Conventions on wages, the Committee considers it appropriate to examine Convention No. 26 (minimum wage) and Convention No. 95 (protection of wages) together.

The Committee takes note of the joint observations of the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the International Organisation of Employers (IOE) on the application of the Convention No. 26, received on 1 October 2020. The Committee also takes note of the observations of the following workers' organizations on the application of Conventions Nos. 26 and/or 95: the Confederation of Workers of Venezuela (CTV), received on 21 August and 30 September 2020; the Federation of University Teachers' Associations of Venezuela (FAPUV) and the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 28 August 2020; the CTASI, received on 30 September 2020; the Confederation of Autonomous Trade Unions (CODESA), the General Confederation of Labour (CGT) and the National Union of Workers of Venezuela (UNETE), received

on1 October 2020; the National Union of Men and Women Public Officials in the Legislative Career Stream, and Men and Women Workers at the National Assembly (SINFUCAN) and the CTASI, received on 5 October 2020; and the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), received on 3 December 2020.

## Minimum wage

### *Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)*

*Article 3 of Convention No. 26. Participation of the social partners in minimum wage fixing.* The Committee recalls that in March 2018, in the context of the complaint alleging non-observance by the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), submitted under article 26 of the ILO Constitution by 33 employer delegates to the 104th Session (2015) of the International Labour Conference, the Governing Body established a Commission of Inquiry to consider the issues raised in the complaint. The Committee notes that the Commission of Inquiry completed its work in September 2019 and that its report was submitted to, and noted by, the Governing Body, at its 337th Session (October 2019).

The Committee notes the document submitted to the Governing Body at its 340th Session in October 2020 (GB.340/INS/13) containing the Government's response to the report of the Commission of Inquiry, and also notes the discussion that took place in the Governing Body, which will continue during its next session in March 2021. In its response, the Government indicates that it does not accept the recommendations of the Commission of Inquiry because if it were to comply with them it would mean violating the national Constitution, the separation of powers, rule of law, independence, sovereignty and self-determination of the Bolivarian Republic of Venezuela. However, the Committee observes that the Government has not made use of the prerogative provided by the ILO Constitution, of referring the complaint, within a period of three months, to the International Court of Justice. Moreover, the Committee notes that the Government expresses its willingness to improve compliance with the ILO Conventions ratified by the country on the basis of constructive suggestions issued by the ILO supervisory bodies, and to receive technical assistance for the Office. The Committee recalls that in previous occasions when following-up on recommendations of a commission of inquiry, it has observed that the ILO Constitution does not make the results of a Commission of Inquiry subject to the consent of the State concerned. In this regard, the Committee has recalled that under article 32 of the ILO Constitution, the only authority capable of affirming, varying or reversing the findings or recommendations of a Commission of Inquiry is the International Court of Justice, and that, therefore, a government which chooses not to avail itself of the possibility of referring the matter to the International Court of Justice ought to take account of the conclusions and act upon the recommendations of the Commission of Inquiry, in light of the provisions of the ILO Constitution.

The Committee takes note of the conclusions of the Commission of Inquiry regarding the allegations of adoption without tripartite consultation of increases to the minimum wage (paragraphs 437 to 442 of the report of the Commission of Inquiry, hereinunder, "the report"). In particular, the Commission of Inquiry concluded that "The information gathered thus reveals the Government's failure to comply with Convention No. 26. In addition to the numerous increases in relation to which the Government did not provide specific evidence of consultation, regarding the communications submitted by the Government to prove that consultation had taken place with employers' and workers' organizations, the Commission considers that the mere sending of such belated and/or generic communications, containing abstract requests for proposals "in relation to the minimum wage" over six months, without providing any information on the anticipated machinery for fixing and applying the minimum wage, cannot be deemed to comply with the provisions of the Convention, which establish the obligation of the Government to engage in effective consultations." (paragraph 442 of the report).

The Committee also notes the recommendations of the Commission of Inquiry (paragraphs 495 to 497), in which it observed "with the deepest concern the absence of effect given to the previous recommendations of the ILO supervisory bodies on the issues raised, as well as the gravity of the current situation", and considered that the competent authorities must give effect to those recommendations without further delay and complete their implementation by 1 September 2020 at the latest. The Commission of Inquiry urged the Government to avail itself of ILO technical assistance for implementation of the recommendations. With regard to consultations concerning minimum wages (paragraph 497(3)(i) of the report), the Commission of Inquiry recommended the adoption of the necessary measures to ensure due and effective compliance with the consultation requirements set out in Convention No. 26, and the ending of the exclusion from social dialogue and consultation of FEDECAMARAS and trade union organizations that are not close to the Government. In particular, the Commission of Inquiry recommended, through tripartite dialogue with the representative organizations of employers and

workers, the establishment of effective tripartite consultation procedures. In light of the serious deficiencies in social dialogue in the country, taking into consideration the recognition by the Government itself of the need to create mechanisms for social dialogue, the Commission of Inquiry advised the establishment in the very near future of bodies or other institutionalized procedures for social dialogue to facilitate compliance with the obligations of consultation.

Finally, the Committee notes that the Commission of Inquiry recommended "the creation and convocation in the very near future of the following dialogue round-tables in support of the application of its recommendations: (i) a round-table for tripartite dialogue which includes all representative organizations; (ii) a round-table for dialogue between the authorities concerned and FEDECAMARAS on questions relating to that organization [...], and (iii) another round-table for representative workers' organizations to address subjects that are of specific concern to them." The Commission of Inquiry considered that "prior to the session of the ILO Governing Body in March 2020, the round-tables should have been established and have a schedule of meetings and an independent chair who enjoys the confidence of the tripartite constituents in the country, as well as, at the request of any of the constituents, the presence and assistance of the ILO" (paragraph 497(4) of the report).

The Committee notes with ***deep concern*** the conclusions of the Commission of Inquiry regarding the failure of the Government to hold consultations on fixing the minimum wage in the country.

Furthermore, further to its previous comments on this matter, the Committee notes that the Government refers in its report to the communications it sent in reply to the report of the Commission of Inquiry. Moreover, the Government indicates that, given the impact of the health crisis on the country and the realities of the different social and economic sectors, and taking account the opinions expressed publicly by the employers' and workers' organizations, it raised the national minimum wage a second time in April 2020, in the midst of the pandemic and despite the paralysis of many sectors in the country. The Committee notes with ***deep concern*** that FEDECAMARAS and the IOE, and CODESA, the CGT and UNETE, the CTV, SINFUCAN, FAPUV and CTASI alike point out that the last two increases in the minimum wage (January and April 2020) were once again decided unilaterally and without consultation by the Government. FEDECAMARAS and the IOE indicate that even before the health emergency broke, there was no apparent progress in the establishment of a round-table for tripartite dialogue, and that neither that recommendation nor any of the other recommendations of the Commission of Inquiry, which should all have been implemented before September 2020, had been either partially or completely implemented by the Government. Several of the workers' organizations that sent observations to the Committee also indicated that the Commission of Inquiry's recommendations on social dialogue and consultation had not been implemented.

In these circumstances, the Committee deplores the failure of the Government to fulfil its obligation to consult in respect of fixing the national minimum wage. ***The Committee urges the Government to take the necessary measures without delay, including by taking into account the recommendations of the Commission of Inquiry, to ensure full compliance with the Convention. The Committee requests the Government to provide information in that regard.***

***The Committee is aware of the on-going consideration being given by the Governing Body to the follow-up of the report of the Commission of Inquiry. In view of the grave violations of labour rights described above, the systemic failure to comply with a number of ILO Conventions and the serious lack of cooperation from the Venezuela authorities with regard to its obligations, the Committee considers it critical that within the context of the ILO standards the situation in the country be given the full and continuing attention of the ILO and the ILO supervisory system in order to obtain robust and effective measures that can bring about compliance in law and in practice with the Conventions concerned.***

## Protection of wages

*Article 4 of Convention No. 95. "Socialist cestaticket".* In its previous comments, while noting the observations of the social partners, the Committee examined the system of the "socialist cestaticket" (a food benefit to protect the purchasing power of workers in relation to food, established by Decree No. 2066 of 2015; the Decree allows several modalities whereby the benefit may be provided, including payment in kind), and requested the Government to take the necessary measures to engage in dialogue without delay at the national level involving all the employers' and workers' organizations concerned so as to examine possible solutions that are sustainable over time, including any necessary adjustment to the "socialist cestaticket" system, with a view to ensuring full conformity with *Article 4* of the Convention. The Committee notes from the Government's report, that when the "socialist cestaticket" system is included in collective labour agreements, the choice of modalities of provision are adopted by common agreement of the interested parties. The Government adds that: (i) unions must guide workers as to the correct use of the coupons, tickets or electronic food cards; and (ii) the payment or provision of food is in addition to the actual wages paid; in no case does payment of the "socialist cestaticket" replace even partial, and still less full, payment of wages. However, the Committee notes the new observations submitted by the workers' organizations in this regard, reporting persistent difficulties in the application

of this system. Under these circumstances, the Committee observes with regret that the Government has not taken steps to engage in dialogue at national level on these issues, as it has been requested to do in previous comments. ***The Committee is therefore obliged to reiterate its request to the Government to take the necessary measures to engage in dialogue without delay at the national level involving all the employers' and workers' organizations concerned so as to examine possible solutions that are sustainable over time, including any necessary adjustment to the "socialist cestaticket" system. The Committee requests the Government to provide information in this regard.***

*Article 5. Electronic payment of wages.* The Committee notes that the CTV, CTASI and FAPUV indicate that electronic payment of wages has become generalized, causing serious inconvenience to workers when they are obliged to make cash payments, and insurmountable difficulties in the many areas where there are no banking services, and also given that the banking system imposes limits on the amount of cash that can be withdrawn. The Committee recalls that *Article 5* provides that wages shall be paid directly to the worker concerned. The same provision allows a number of exceptions as may be provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to another arrangement. The Committee also recalls that it has considered that the payment of wages by bank transfer is compatible with the Convention to the extent that it fulfils the provisions of *Article 5* (2003 General Survey, Protection of wages, paragraph 84). However, the Committee considers that there is an issue of application in practice when the prevailing circumstances would make it difficult or even impossible for workers to obtain the corresponding amount in cash from the bank or institution where their wages has been paid, as is denounced by the workers' organizations in the present case. ***The Committee requests the Government to take the necessary measures to address this issue and to provide information in that regard.***

*Article 12. Delayed payment of wages.* The Committee notes that the CTASI refers to several cases of delayed payment of wages, in particular in the case of National Assembly workers. ***Recalling the importance of the payment of wages at regular intervals, the Committee requests the Government to provide its comments in that regard.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 26** *(Dominica, Sierra Leone, Slovakia, United Kingdom of Great Britain and Northern Ireland: Anguilla, Zimbabwe);* **Convention No. 95** *(Dominica, Ecuador, Kyrgyzstan, Sierra Leone, Uganda, United Republic of Tanzania, Bolivarian Republic of Venezuela);* **Convention No. 99** *(United Kingdom of Great Britain and Northern Ireland: Anguilla, Zimbabwe);* **Convention No. 131** *(Ecuador, Kyrgyzstan, Uruguay).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 26** *(Turkey);* **Convention No. 95** *(Malaysia, Turkey);* **Convention No. 99** *(Turkey).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 26** *(United Kingdom of Great Britain and Northern Ireland: British Virgin Islands and Montserrat)*; **Convention No. 95** *(Nicaragua, United Kingdom of Great Britain and Northern Ireland: Montserrat)*; **Convention No. 99** *(United Kingdom of Great Britain and Northern Ireland: Isle of Man and Jersey)*.

# Working time

## Haiti

### Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1952)

### Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1952)

### Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1952)

### Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1958)

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

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 1, 14, 30 and 106 in a single comment.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 29 August 2018, the Association of Haitian Industries (ADIH), received on 31 August 2018, and the International Trade Union Confederation (ITUC), received on 1 September 2018.

***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)***

The Committee notes the discussion which took place in the Conference Committee on the Application of Standards (Conference Committee), including with regard to the impact of the 2017 Act to organizing and regulating work over a 24-period divided into three segments of eight hours (hereinafter: Act on working time) on the application of the ratified Conventions on working time. In its conclusions, the Conference Committee asked the Government to: (i) review in consultation with the most representative employers' and workers' organizations the conformity of the Labour Code and the Act on working time, with respect to the ratified ILO Conventions on working time; (ii) strengthen the labour inspectorate and other relevant enforcement mechanisms to ensure that workers benefit from the protection afforded by the Conventions; (iii) report to the Committee of Experts on these measures; and (iv) avail itself of technical assistance to address these matters.

The Committee notes that, at the end of the discussion in the Conference Committee, the Government recalled that the Conventions that Haiti had ratified were part of its body of domestic law under article 276-2 of the Constitution of Haiti, and took precedence over national laws in the hierarchy of standards and could be invoked without reserve before the courts. Taking note of the observations of the Committee of Experts concerning the application of the Act on working time, the Government indicated that it was planning to hold tripartite consultations to identify and overcome the main difficulties encountered in the application of the Act, and to issue orders or regulations. The Government also indicated that it was aware of the delay in finalizing the process of reforming the Labour Code. Discussions had begun at the level of the Prime Minister's Office and would be continued within a tripartite framework, in the spirit of the San José Agreement of 21 March 2018 signed by the social partners, taking into account the Office's recommendations.

Furthermore, the Committee notes that the CTSP, in its observations, expresses regret at the lack of progress on working time issues since the discussion in the Conference Committee. However, the CTSP indicates that discussions on the reform of the Labour Code have resumed. The Committee also notes that the ADIH confirms that tripartite discussions on the reform of the Labour Code resumed in August 2018. According to the ADIH, the Act on working time should be repealed and the employers' and workers' organizations should be consulted on the application of the Conventions ratified in this field. The Committee further notes that the ITUC refers to the discussion of the case during the Conference Committee and indicates in particular that: (i) the Act on working time, which liberalizes the regulations on this subject, is giving rise to serious abuses; (ii) the Act was adopted without consultation and outside the process of negotiation of a new Labour Code; and (iii) the situation is aggravated by the lack of resources for labour inspection. The ITUC refers in particular to: (i) workers in the informal economy and in domestic work who are subjected to indecent working conditions in terms of both working time and leave entitlement; (ii) security personnel and subcontracted workers in the textile sector, where there is a regrettable lack of fixed working hours and a refusal by employers to pay overtime; and (iii) workers in export processing zones who are particularly subjected to abuses. ***The Committee requests the Government to send its comments on all the above observations.***

Lastly, the Committee notes the Government's communication received on 30 October 2018 in which it informs the Committee that, further to the conclusions of the Conference Committee, it has requested ILO technical assistance to help it, inter alia, to submit the reports due, to strengthen the inspection services, to consolidate social dialogue with a view to pursuing social reforms, and to address the other matters raised by the Conference Committee. The Government also indicates that it hopes to receive this assistance before the next session of the International Labour Conference. ***The Committee hopes that this technical assistance will be made available without delay. The Committee requests the Government to provide detailed information on the results of the planned technical assistance, and also on the measures taken to ensure the effective application in law and practice of the ratified Conventions on working time.***

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

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 1** *(Equatorial Guinea, United Arab Emirates, Bolivarian Republic of Venezuela);* **Convention No. 14** *(Viet Nam);* **Convention No. 30** *(Equatorial Guinea);* **Convention No. 47** *(Uzbekistan);* **Convention No. 89** *(United Arab Emirates);* **Convention No. 101** *(Sierra Leone);* **Convention No. 132** *(Azerbaijan);* **Convention No. 153** *(Ukraine, Uruguay);* **Convention No. 171** *(Côte d'Ivoire);* **Convention No. 175** *(Guatemala, Russian Federation).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 14** *(Turkey, Ukraine, Zimbabwe);* **Convention No. 47** *(Ukraine);* **Convention No. 106** *(Ukraine);* **Convention No. 153** *(Turkey, Bolivarian Republic of Venezuela).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 1** *(Uruguay)*; **Convention No. 14** *(United Kingdom of Great Britain and Northern Ireland: British Virgin Islands, Falkland Island: Malvinas, Montserrat and St Helena, Uruguay)*; **Convention No. 30** *(Uruguay)*; **Convention No. 101** *(United Kingdom of Great Britain and Northern Ireland: Anguilla and Isle of Man)*; **Convention No. 106** *(Uruguay)*; **Convention No. 132** *(Uruguay)*.

# Occupational safety and health

## Belize

### Radiation Protection Convention, 1960 (No. 115) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*General observation of 2015*. The Committee would like to draw the Government's attention to its general observation of 2015 under this Convention, including the request for information contained in paragraph 30 thereof.

The Committee notes the information in the Government's current report that the National Occupational Safety and Health (NOSH) Bill does take into consideration all the Committee's observations as it ensures the effective protection of workers exposed to ionizing radiation in the course of their work. The Committee also notes from the Government's report that provisions have been made in the NOSH Bill for maximum permissible doses of ionizing radiation, alternative employment (especially for pregnant women) and the prevention of occupational exposure during an emergency. Furthermore, according to available information, the NOSH Bill has not yet been adopted due to concerns that it may be burdensome to employers. The Committee notes that, in spite of its previous request, the Government has not provided a detailed report as requested by the Committee. The Committee wishes to emphasize that the indication that the new legislation is in the process of adoption does not free the Government from the obligation to ensure the application of the provisions of the Convention during the transition period and to provide such information in its report. ***The Committee requests the Government to supply detailed information on the application of the Convention, including new legislation, if adopted, and where it has not been adopted, the manner in which the Government ensures the application of the provisions of the Convention in practice. It also reiterates its request to the Government to respond in detail to its previous observation which reads as follows:***

*Articles 3(1) and 6(2) of the Convention. Maximum permissible doses of ionizing radiation.* With reference to its previous comments, the Committee notes the Government's response indicating that on 13 March 2009, the Labour Advisory Board was re-activated and that its main duty is the revision of national labour legislation. The Committee notes that the Ministry is currently in the process of identifying a consultant that will work with the Labour Advisory Board to conduct the revision of the legislation, and that comments made by the Committee will be submitted to the Board. ***The Committee hopes that in the course of the ongoing revision of national labour legislation due account will be taken on the exposure limits adopted by the International Commission on Radiological Protection, in order to ensure the effective protection of workers exposed to ionizing radiation in the course of their work.***

*Article 14. Provision of alternative employment.* The Committee notes the Government's response indicating that there is no provision in the Labour Act for the transfer of pregnant women from their work involving exposure to ionizing radiation to another job. The Committee notes, however, the Government's statement that that the National Occupational Safety and Health Policy, adopted by Cabinet on 9 November 2004, can provide a suitable framework for drafting legislation that could make provision for such transfer and that legislation is drafted in consultation with the Labour Advisory Board. ***The Committee hopes that in the course of the ongoing revision of the national labour legislation due account will be taken of the need to ensure that suitable alternative employment opportunities, not involving exposure to ionizing radiations, be provided for workers having accumulated an effective dose beyond which detriment to their health considered unacceptable is to arise, as well as for pregnant women, who may be faced with the dilemma that protecting their health means losing their employment.***

*Occupational exposure during an emergency.* The Committee notes that there is currently no provision within the Labour Act laying out the circumstances in which exceptional exposure is authorized. ***The Committee requests the Government, in the course of the ongoing revision of the national labour legislation, to take due account of the need to determine circumstances in which exceptional exposure is authorized, and to make protection as effective as possible against accidents and during emergency operations, in particular with regard to the design and protective features of the workplace and the equipment, and the development of emergency intervention techniques, the use of which in emergency situations would enable the exposure of individuals to ionizing radiations to be avoided.***

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

## China

### Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2007)

### Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2002)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 155 (OSH) and 167 (OSH in construction) together.

The Committee takes note of the supplementary information on the application of Conventions Nos 155 and 167 provided by the Government in light of the decision adopted by the Governing Body at its

338th Session (June 2020). The Committee proceeded with the examination of the application of those Conventions on the basis of the supplementary information received from the Government this year (see under *Article 11(c)* and *(e)* and application in practice of Convention No. 155, and *Article 35* and application in practice of Convention No. 167 below), as well as on the basis of the information at its disposal in 2019.

*COVID-19 measures*. The Committee notes the information provided in the Government's supplementary report related to OSH measures in the context of the COVID-19 pandemic, including measures to strengthen prevention and monitoring during the resumption of work in construction and civil engineering projects.

## A. General provisions

### Occupational Safety and Health Convention, 1981 (No. 155)

*Article 11(c) and (e) of the Convention. Production of annual statistics on occupational accidents and diseases and application of the Convention in practice.* The Committee previously noted the 26,393 cases of occupational diseases reported in 2013, including 23,152 cases of pneumoconiosis. In response to its request on concrete measures taken to address pneumoconiosis, the Committee notes the information in the Government's report concerning different preventive OSH measures taken in recent years, including the formulation of risk prevention and control plans in coal mines. The Committee also notes with ***interest*** the adoption, in 2019, of a National Action Plan on the Prevention and Control of Pneumoconiosis. In this regard, the Committee welcomes the Government's indication in its supplementary report, that in the period July 2019–December 2020, 10 departments and the All-China Federation of Trade Unions jointly issued the Notice on Disseminating the Enhanced Action Plan for the Prevention and Control of Pneumoconiosis. The Government refers to the departments' intensified efforts in five areas, including supervision and law enforcement, and efforts to promote the special treatment of occupational hazards in key industries such as mining and metallurgy, and carrying out reviews on dust hazard management in various industries. The Committee further notes the Government's indication in its supplementary report that China has published data on occupational diseases through an annual statistical bulletin on the development of public health services. The Government indicates in this respect that there were 19,428 cases of occupational disease in 2019 (including 15,898 cases of occupational pneumoconiosis), a decrease from 23,497 cases of occupational diseases in 2018, (with 19,468 cases of occupational pneumoconiosis). The Committee further notes the Government's indication that in 2019, there were 44,609 occupational safety accidents resulting in the death of 29,519 workers. It takes note of the Government's indication that the 2019 figures represent a 33.5 per cent decrease since 2015 in the number of accidents, and a 34.1 per cent decrease in the number of fatalities. ***The Committee requests the Government to continue to provide statistics on occupational accidents and diseases at the national level. The Committee further requests the Government to continue its efforts with regard to the prevention of occupational accidents and occupational diseases, and to continue to provide information on the specific preventive measures taken in this regard, including measures taken in the implementation of the National Action Plan on the Prevention and Control of Pneumoconiosis, and the impact of such measures.***

## B. Protection in specific branches of activity

### Safety and Health in Construction Convention, 1988 (No. 167)

*Article 8 of the Convention. Cooperation between two or more employers undertaking activities simultaneously at one construction site.* The Committee previously noted section 24 of the Administrative Regulations on Work Safety in Construction Projects which states that the main contractor shall be responsible for the overall occupational safety at the construction site. When the main contractor subcontracts a construction project to any other entity, it shall explicitly stipulate their respective rights and obligations regarding work safety. The main contractor and the subcontractor shall bear joint and several liability with regard to the safety of the subcontracted project and shall share duties and responsibilities. The Committee also noted that the Government identified the inadequacy of accountability and responsibility as a contributing factor to the high accident rate in the construction sector, and it requested information on the enforcement of section 24 in practice.

The Committee notes the statistics provided by the Government, in response to the Committee's previous request, regarding enforcement in the construction industry in general. The Government refers to the adoption of the Opinion on Further Accelerating the Development of General Project Contracting (No. 93, 2016), which provides that project contracting enterprises may directly subcontract design or construction work to enterprises with the corresponding qualifications, but the general contractor enterprise shall be fully responsible for, among others, the quality and safety of the project in accordance with the contract signed with the construction entity. The Government also indicates that the Ministry of Housing and Urban-Rural Development issued a Notice on Management Measures for the Evaluation and Punishment of Contract Awarding and Contracting of Construction Projects (No 1. 2019) which identified violations relating to illegal contract awarding, subcontracting and illegal subcontracting, as well as

established standards for investigation and punishment. The Government further indicates that the Measures for the Administration of Subcontracting for the Construction of Houses and Municipal Infrastructure Projects (Decree No. 47 of the Ministry of Housing and Urban-Rural Development) was revised in 2019, and provides that the contractor of a project through subcontracting shall have the necessary qualifications for the work required, and shall obey the occupational safety management measures of the main contractor on the construction site. The Committee recalls that, in accordance with *Article 8(1)(a)* of the Convention, whenever two or more employers undertake activities simultaneously at one construction site, the principal contractor, or other person or body with actual control over or primary responsibility for overall construction site activities, shall be responsible for co-ordinating the prescribed safety and health measures and, in so far as is compatible with national laws and regulations, for ensuring compliance with such measures; and that, in accordance with *Article 8(1)(c),* each employer shall remain responsible for the application of the prescribed measures in respect of the workers placed under his authority. ***The Committee requests the Government to continue to provide information on the measures it is taking to ensure the implementation of prescribed safety and health measures under the responsibility of the principal contractor whenever two or more employers undertake activities simultaneously at one construction site, particularly with respect to construction sites with several tiers of subcontracting. Noting the general information provided, the Committee once again requests detailed information on the application and enforcement of section 24 of the Administrative Regulations on Work Safety in Construction Projects in practice, including inspections undertaken, violations detected and penalties applied for non-compliance, including fines collected and prosecutions. The Committee requests that this detailed information identify how often the principal contractor, as distinct from the subcontractor, is the object of enforcement actions.***

*Article 18(1). Work at heights including roof work.* The Committee notes the Government's statement, in reply to the Committee's previous request, that falls from heights are the main type of accident in construction, representing 52.2 per cent of total accidents in 2018. The Government indicates that supervision of personal protective equipment (such as safety belts) shall be strengthened in order to prevent such falls, and that in 2019, the Ministry of Housing and Urban-Rural Development, together with the State Administration for Market Regulation and the Ministry of Emergency Management, issued the Notice on Further Strengthening Supervision and Management over Personal Protective Equipment. The Government also reports that it is taking measures to strengthen monitoring of projects considered to be higher risk, including those involving work at high heights particularly through the development of detailed enforcement rules regarding such projects and the undertaking of targeted inspections. ***The Committee urges the Government to pursue its efforts to enforce safety measures for work at heights and to promote the use of safety equipment at all construction sites. It requests the Government to continue to provide information on the enforcement measures implemented in that respect and to provide data on the number of occupational accidents reported (including fatal and serious accidents) due to falls from heights, as well as the number and nature of violations detected and penalties applied for non-compliance.***

*Article 35. Effective enforcement of the provisions of the Convention and application in practice.* The Committee previously noted the Government's identification of the contributing factors to accidents in the construction sector, including a lack of uniform standards in the construction sector; an inadequate enterprise-ownership regime with respect to, accountability and responsibility; the lack of thoroughness in the elimination of hidden workplace hazards; and the inadequacy of investigations and penalties following occupational accidents. It noted that in 2018, the construction industry was, for the ninth consecutive year, the sector with the largest number of occupational accidents.

The Committee notes the information provided by the Government, in response to its previous request, on the measures taken by the Ministry of Housing and Urban-Rural Development to improve the implementation of the Convention, including: (i) measures to strengthen safety inspections in the construction sector, including the elimination of more than 360,000 potential safety hazards on construction sites and the suspension of licences for 164 enterprises in 2018; (ii) improved regulation of the construction market to address illegal subcontracting; (iii) further awareness-raising on safety in construction and safety training for construction workers; and (iv) the development of a national information system on construction safety to promote supervision, collaboration and information sharing. The Government indicates that departments in charge of housing and urban-rural construction at all levels inspected 320,155 projects, investigated 11,302 illegal activities, penalized 8,161 enterprises and imposed fines of approximately ¥102 million (approximately US$15,513,000). In 2018, there were 734 occupational safety accidents in housing and municipal projects nationwide, resulting in the death of 840 workers. In this respect, the Committee notes with ***concern*** the Government's statement that this represents a 4.1 per cent increase in the number of fatalities due to accidents in the sector between 2017 and 2018. The major cause of accidents were falls from heights, falling objects, mechanical accidents and crane-related accidents. It further notes that in 2018, 983 cases of occupational diseases were reported in the construction sector, mostly related to civil engineering projects (827 cases). With reference to its comments above on Convention No. 155, the Committee notes that the main occupational disease

reported in the construction industry was pneumoconiosis. In its supplementary report, the Government also refers to measures taken to increase the accountability of responsible personnel. The Government further refers to a large-scale investigation conducted in 2019, with the random inspections conducted of 163,446 projects, investigations into 351,677 potential safety hazards, and the issuance of 58,888 notices regarding rectification with deadlines, 304 legal enforcement proposals, and 6,437 notices of suspension of work or business suspensions. ***The Committee urges the Government to pursue its efforts to ensure the application of the Convention in practice, and to continue to provide information on the concrete steps taken to reduce the number of fatal accidents in the sector. It also urges the Government to continue to take measures to ensure the effective enforcement of the Convention through the provision of appropriate inspection services in the sector, as well as appropriate penalties and corrective measures. Lastly, the Committee requests the Government to continue to provide information on the application of the Convention in practice, including the number and nature of the contraventions reported and the measures taken to address them, the number of penalties and corrective measures applied, and the number, nature and cause of occupational accidents and occupational diseases reported.***

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

## Comoros

### White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1978)

*Articles 1, 2 and 3 of the Convention. Prohibition of the use of white lead and sulphate of lead in the internal painting of buildings.* The Committee notes the information provided by the Government in its report that there are no specific provisions in national legislation applying the Convention, but that the Labour Code contains general indications in this respect. ***The Committee hopes that the Government, in its next report, will be able to provide detailed information on the measures taken in law and practice to regulate the use of white lead and sulphate of lead and of all products containing these pigments, in accordance with the provisions of the Convention.***

*Application in practice.* The Committee notes the Government's indication that there is no report of the inspection services which would provide information on the manner in which the Convention is applied in practice or which would provide statistical data relating to it. ***The Committee requests the Government to provide information when it is available on the application of the Convention in practice, including statistical information on cases of lead poisoning among working painters, indicating, in particular, morbidity and mortality due to lead poisoning.***

## Guyana

### Occupational Cancer Convention, 1974 (No. 139) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes that draft Regulations on the safe use of chemicals at work of 31 January 2003 are currently being discussed. It notes the Government's statement that these draft Regulations provide protection against occupational cancer and also that it refers to the international exposure limits standard established by the American Conference of Governmental Industrial Hygienists. The Committee further notes that Chapter 3.6 of Annex 2 of the draft Regulations contains rules applicable to carcinogenicity and also notes the Government's statement that these draft Regulations will attempt to provide for medical examinations. The Committee hopes that these Regulations will be adopted in the near future, ensuring the application of the Convention, and that they will also ensure that medical examinations or biological or other tests or investigations are carried out during the period of employment and thereafter, in accordance with *Article 5* of the Convention. ***The Committee requests the Government to provide information on measures taken to ensure the application of the Convention and to provide a copy of the Regulations, once they are adopted.***

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

## Sierra Leone

### Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

For a number of years, the Committee has drawn the attention of the Government to the fact that the national legislation does not contain provisions to give effect to Part II of the Convention (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of Article 17 of the Convention (which applies to all sectors of economic activity), as it is not applicable to certain branches of activity, inter alia, sea, air or land transport and mining.

Since 1979, in reply to the Committee's comments, the Government has indicated in its reports that a Bill to revise the 1974 Factories Act was being drafted and would contain provisions consistent with those of the Convention, and would apply to all the branches of economic activity. In its latest report (received in 1986), the Government indicates that the draft Factories Bill, 1985, has been examined by the competent parliamentary committee and is to be submitted to Parliament for adoption.

With its report for the period ending 30 June 1991, the Government supplied a copy of extracts of the Factories Bill containing provisions which should give effect to Part II of the Convention. In this connection, the Government was requested to indicate the stage of the legislative procedure reached by the Bill and the body which was in the process of examination of the Bill. ***Since no information has been provided by the Government in this respect, the Committee once again expresses the hope that the above-mentioned Bill will be adopted in the near future and requests the Government to provide a copy of this text, once it has been adopted.***

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

## Turkey

**Radiation Protection Convention, 1960 (No. 115)** (ratification: 1968)
**Guarding of Machinery Convention, 1963 (No. 119)** (ratification: 1967)
**Maximum Weight Convention, 1967 (No. 127)** (ratification: 1975)
**Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 2005)
**Occupational Health Services Convention, 1985 (No. 161)** (ratification: 2005)
**Safety and Health in Construction Convention, 1988 (No. 167)** (ratification: 2015)
**Safety and Health in Mines Convention, 1995 (No. 176)** (ratification: 2015)
**Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)** (ratification: 2014)

In order to provide a comprehensive view of the issues relating to the application of ratified occupational safety and health (OSH) Conventions, the Committee considers it appropriate to examine Conventions Nos 115 (radiation protection), 119 (guarding of machinery), 127 (maximum weight), 155 (OSH), 161 (occupational health services), 167 (OSH in construction), 176 (OSH in mining) and 187 (promotional framework for OSH) together.

The Committee takes note of the supplementary information on the ratified OSH Conventions provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020).

The Committee also notes the observations of the Confederation of Public Employees' Trade Unions (KESK) on the application of Conventions Nos 155 and 161, received on 31 August 2020, the observations of the International Trade Union Confederation (ITUC) on the application of Conventions Nos 155, 167, 176 and 187, received on 16 September 2020, the observations of the Turkish Confederation of Employers' Associations (TISK) on the application of Conventions Nos 115, 119, 127, 155, 161, 167, 176 and 187, received on 29 September 2020, and the observations of the Confederation of Public Servants Trade Unions (MEMUR-SEN) on the application of Convention No. 155, communicated with the Government's supplementary report. In addition, the Committee notes the Government's responses to the observations of the ITUC and the KESK, received on 4 November 2020. The Committee proceeded with the examination of the application of Conventions Nos 115, 119, 127, 155, 161, 167, 176 and 187 on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019.

*COVID-19 measures.* The Committee notes the observations of the TISK concerning measures taken in response to the COVID-19 pandemic, including the dissemination of general and sector-specific OSH and COVID-19 information by the General Directorate of Occupational Safety and Health, and measures taken by employers' organizations and their member companies in the metal and textile sectors, such as the distribution of personal protective equipment. The Committee also notes the observations of the ITUC alleging that contagions and deaths due to COVID-19 have become worryingly predominant in factories. In this regard, the ITUC refers to: (i) the situation in a fish company where more than 1,000 employees allegedly work without preventive measures; and (ii) the alleged lack of preventive and protective measures for workers in the construction sector, and the dismissal of workers who raise concerns about

OSH issues. The Committee notes the Government's response to the ITUC's observations regarding the actions it has taken in the COVID-19 context, including legislative changes and the provision of guidance materials, taking into account comparative practices. The Government states that necessary procedures regarding certain complaints duly made by employees have been carried out by the competent authorities. ***The Committee requests the Government to continue to provide information on the developments in this respect, including on the measures taken to ensure the application in practice of the ratified OSH Conventions in the COVID-19 context.***

It notes the observations of the TISK, communicated with the Government's report in 2019 on Conventions Nos 115, 119, 127, 155, 161 and 187.

*Articles 2, 3, 4(3)(a) and 5 of Convention No. 187, Articles 4, 7 and 8 of Convention No. 155, Article 1 of Convention No. 115, Article 16 of Convention No. 119, Article 8 of Convention No. 127, Articles 2 and 4 of Convention No. 161, Article 3 of Convention No. 167 and Article 3 of Convention No. 176. Continuous improvement of occupational safety and health in consultation with the most representative organizations of employers and workers and the national tripartite advisory body. National OSH policy and programme.* The Committee previously noted the Government's indication that the tripartite National Occupational Safety and Health Council (National OSH Council) met twice a year, and had the objective of advising the Ministry of Family, Labour and Social Security and the Government on developing policies and strategies to improve OSH conditions. It also noted the adoption of the National OSH Policy (III) and National Action Plan for the period 2014–18, which included objectives related to the development of an occupational accident and disease statistics and recording system and the improved performance of occupational health services.

The Committee notes with ***concern*** the Government's indication in its report that the last meeting of the National OSH Council was held in June 2018 and that the review of the National OSH Policy and Action Plan for 2014–18, and the adoption of a new OSH Policy and Action Plan for 2019–23, are still pending. The Committee recalls that the previous Regulations on the National OSH Council of 2013 specified that its composition included 13 representatives from the social partners (and 13 from public institutions), and it notes the Government's indication that, pursuant to Decree-Law No. 703 of 2018, the National OSH Council will be reorganized and its new members will be nominated by the President. In this regard, the Committee notes the concerns of the KESK that there have been no meetings of the National OSH Council since 2018, which is confirmed by the Government's response. The Committee also notes the MEMUR-SEN's observation regarding the need for social dialogue mechanisms to establish a schedule of occupational diseases. The Government also provides information, in response to the Committee's request, on the progress achieved with respect to the annual performance indicators in each of the seven objectives set out in the National Action Plan 2014–18. The Committee further notes the Government's reference to tripartite meetings and consultations with sector representatives in the construction and mining sectors, and the observations made by the TISK on the application of Convention No. 155 stating that steps are being taken to improve social dialogue in the area of OSH. The Committee nevertheless notes the KESK's observation that the National Action Plan 2019–23 has yet to be adopted. ***The Committee requests the Government to provide information on the review undertaken of the National OSH policy and Action Plan for the period 2014–18, including the evaluation of the progress made with the performance indicators. It requests the Government to provide information on the formulation and adoption of a new OSH policy and programme for the subsequent period. It requests the Government to provide information on the consultations held with the most representative organizations of employers and workers in this respect. The Committee further requests the Government to provide information on the re-establishment of the National OSH Council and to indicate if it includes representatives of employers' and workers' organizations. Finally, the Committee requests the Government to provide its comments in respect of the MEMUR-SEN's observations on the need to establish a schedule of occupational diseases in consultation with social partners.***

*Articles 2 and 3 of Convention No. 187 and Article 4 of Convention No. 155. Prevention as the aim of the national policy on OSH.* In its previous comments, the Committee noted the proposed measures in the National OSH Policy Document III (2014–18) to reduce occupational accidents in the metal, construction and mining sectors.

The Committee welcomes the detailed information provided by the Government, in response to its request, on the application in practice of Conventions Nos 167 and 176, including the number of occupational accidents and fatal occupational accidents. The Committee notes the Government's indication that, while desired levels in the performance indicators in the National Policy Document III (2014–18) have not been reached, efforts to reduce occupational accidents and occupational diseases continue. The Government states that there are plans to revise the relevant targets and indicators in the preparation of the 2019–23 Action Plan to provide for more effective actions, after the restructuring of the National OSH Council. In this regard, the Committee also welcomes the information provided by the Government concerning several activities in the construction sector to reduce occupational accidents and the Government's reference to the imminent launch of a major project to improve OSH in the mining

sector. In addition, the Committee notes the observations of the TISK concerning the publication of two communications on major industrial accidents in June and July 2020. The Committee notes, however, with ***concern*** the Government's indication that, in 2017, there were 587 fatal occupational accidents in the construction sector and 86 such accidents in the mining sector. The Committee also notes that, according to the ITUC, the number of fatal occupational accidents has increased in 2020 compared to 2019, with the main causes of fatalities being crush syndrome, traffic-related incidents and falls. In this respect, the Committee notes the Government's response that the number of accidents should not be examined in isolation, but should be evaluated over the years, against OSH conditions and the number of employees in the country. The MEMUR-SEN also alleges the existence of insufficiencies regarding various aspects of the national OSH system, and a high number of industrial accidents per day. ***The Committee requests the Government to provide its comments in respect of the MEMUR-SEN's observations. The Committee also requests the Government to continue to take measures to reduce occupational accidents in the sectors and workplaces where workers are particularly at risk (particularly in the metal, mining and construction sector and where workers use machinery). It requests the Government to continue to provide detailed information on the number of occupational accidents, including fatal occupational accidents, in all sectors and workplaces. It also requests the Government to provide information regarding occupational diseases, including the number of cases of occupational disease recorded disaggregated, if possible, by sector, age group and gender.***

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

***[The Government is asked to reply in full to the present comments in 2021.]***



## Ukraine

### Occupational Cancer Convention, 1974 (No. 139) (ratification: 2010)

### Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2012)

### Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 2011)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 139 (occupational cancer), 155 (OSH) and 176 (safety and health in mines) together.

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) on the application of Conventions Nos 155 and 176, received on 16 September 2020, alleging that there is a lack of preventive and protective measures to protect workers against the spread of COVID-19 and a shortage of personal protective equipment throughout the country, but especially in the healthcare and mining sector. ***The Committee requests the Government to provide its comments in this respect.***

The Committee also notes the observations of the Confederation of Free Trade Unions of Ukraine (KVPU) on the application of Conventions Nos 155 and 176, received in 2019.

#### *A. General provisions*

#### Occupational Safety and Health Convention, 1981 (No. 155)

*Article 11(c) of the Convention. Notification of occupational accidents and diseases.* The Committee notes that, according to the observations of the KVPU, employers do not follow, in practice, the notification procedures established by Decision No. 337 of the Cabinet of Ministers of Ukraine of 17 April 2019 approving the Procedure for Investigating and Recording Accidents and Occupational Diseases. The KVPU alleges that employers transmitted the notifications in violation of the deadlines, for 120 out of the 209 accidents registered by the State Labour Service (SLS) in the first half of 2019. ***The Committee requests the Government to provide its comments in this respect, and to take the necessary measures to ensure that Decision No. 337 is fully applied in practice with a view to ensuring the notification of occupational accidents and diseases by employers.***

#### *B. Protection against specific risks*

#### Occupational Cancer Convention, 1974 (No. 139)

*Articles 2, 3 and 4 of the Convention. Replacement of carcinogenic substances and agents, measures to be taken to protect workers, record keeping, and provision of information.* The Committee notes that the Government's report does not respond to its previous comments on the issues covered by *Articles 2* (replacement of carcinogenic substances and agents), *3* (measures taken to protect workers and for record keeping) and *4* (providing workers with information on the dangers involved and the measures to be taken) of the Convention. The Committee also notes with ***concern*** that the Government: (1) reiterates previously raised difficulties in the application in practice of those *Articles*, including lack of funding, leading to the absence of measures to replace carcinogenic substances and agents by non-carcinogenic or less harmful substances or agents, and of an appropriate system to record the number of workers

exposed to carcinogenic substances and agents; and (2) indicates that there are currently no special measures to ensure that workers who have been, are or may be exposed to carcinogenic substances and agents, are provided with all possible information regarding the dangers involved and the measures that should be taken. ***Taking into account the difficulties raised, the Committee urges the Government to take all the necessary measures to ensure that full effect is given to Articles 2, 3 and 4 of the Convention in the near future, and to provide information on the measures taken in this respect.***

### C. Protection in specific branches of activity

#### Safety and Health in Mines Convention, 1995 (No. 176)

*Articles 5(1), (2)(e) and 16 of the Convention. Supervision of safety and health in mines, suspension of mining activities, corrective measures and enforcement.* In response to its previous comments on inspections undertaken in mines, the Committee notes the statistics provided in the Government's report regarding the number of inspections conducted, violations detected and total amount of fines imposed. The Committee also notes the observations of the KVPU, alleging that the application of Act No. 877-V of 2007 on Fundamental Principles of State Supervision and Monitoring of Economic Activity restricts inspection in mines. The KVPU also refers to an incident in 2017–18 in which there were two fatal accidents at the same mining workplace within a year of each other, due to the failure to respect an order prohibiting the use of certain equipment, issued by the administrative court following an application by the State Labour Service (SLS). ***Referring to its comments concerning restrictions on the powers of labour inspectors, adopted in 2020 under the Labour Inspection Convention, 1947 (No. 81), and the Inspection (Agriculture) Convention, 1969 (No. 129), the Committee requests the Government to take all the necessary measures to ensure the effective enforcement of the provisions of this Convention, in accordance with Article 16. In this regard, the Committee requests the Government to continue to provide statistics on violations detected during inspections, and detailed information on the measures taken by inspectors in such cases, including penalties imposed and other corrective measures. In addition, the Committee requests the Government to provide further information on the application in practice of Article 5(2)(e), regarding the power of the competent authorities to suspend or restrict mining activities on safety and health grounds, until the condition giving rise to the suspension or restriction has been corrected.***

*Articles 5(2)(c) and (d), 7 and 10(d). Measures to eliminate or minimize the risks to safety and health in mines. Procedures for investigating fatal and serious accidents and the compilation and publication of statistics. Appropriate remedial measures and measures taken to prevent future accidents by employers as a result of investigations.* Further to its previous comments, the Committee notes the Government's reference to the procedure for investigating accidents in enterprises in the coal industry, pursuant to Decision No. 337 of the Cabinet of Ministers of Ukraine of 17 April 2019 approving the Procedure for Investigating and Recording Accidents and Occupational Diseases. The Committee notes, however, that, according to the Government, 23 per cent of investigations mandated in 2018 are still outstanding, along with 5 per cent of the ones mandated in 2017 and 5 per cent of those mandated in 2016, due primarily to the lack of conclusions that should result from the investigation procedure. The KVPU also alleges that the established notification procedures for occupational accidents and diseases are not followed in practice. As regards measures taken to address the causes of such accidents, the Government indicates that the SLS established a commission to review regulatory documents on removing gases, ventilation and combating gas-dynamic phenomena, but does not refer to measures taken in mines in general. The Committee nevertheless notes the observations from the ITUC, which refers to the high rate of occupational accidents and diseases in the mining sector, and alleges that occupational fatalities and diseases in mining are underestimated as there is scant data in the industry. The ITUC further alleges that, according to the SLS, 68.7 per cent of workers in mining have been working in conditions which fail to meet sanitary and hygienic standards, that 53.5 per cent work with excessive dust, 42.3 per cent with excessive noise, 14.2 per cent with excessive vibration, and 9.8 per cent with excessive exposure of harmful chemicals. ***The Committee requests the Government to provide its comments in respect of the ITUC's observations. The Committee also requests the Government to take the necessary measures to ensure that full effect is given to Article 10(d) of the Convention, requiring that employers shall ensure that all accidents and dangerous occurrences are investigated and appropriate remedial action is taken in practice. As regards Article 5(2)(d) on the compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences, the Committee refers to its comments adopted in 2020 concerning Article 11(c) of Convention No. 155. The Committee also requests the Government to provide further detailed information on the measures taken to ensure the application, in mines, of the employers' duties contained in Articles 7 and 10.***

*Article 5(2)(f). Rights of workers and their representatives to be consulted on and participate in OSH measures.* Further to its previous comments on procedures to implement the rights of workers and their representatives to be consulted on and participate in OSH measures *(Article 5(2)(f)*), the Committee notes that section 42 of the Labour Protection Act provides that OSH representatives may apply for assistance to the bodies in charge of state supervision over OSH, and have a right to participate and make

appropriate proposals during inspections. The Committee also notes, however, the observations of the KVPU, alleging that the national legislation does not provide for mandatory and documented procedures to secure real forms of participation by workers' and their representatives in consultations on OSH at the workplace. ***The Committee requests the Government to provide its comments in this respect and to provide further information on the establishment of effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted on OSH matters, and to participate in measures, relating to safety and health at the workplace in accordance with the provisions of the Article.***

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

***[The Government is asked to reply in full to the present comments in 2022.]***



## Uruguay

### Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1988)
### Occupational Health Services Convention, 1985 (No. 161) (ratification: 1988)
### Asbestos Convention, 1986 (No. 162) (ratification: 1995)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 155 (OSH), 161 (occupational health services) and 162 (asbestos) together.

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020) in which it provides information on the measures adopted to deal with the emergency health situation in the context of the COVID-19 pandemic.

*COVID-19 measures.* The Committee appreciates the Government's efforts to provide information on the OSH measures taken by the Government in the context of the COVID-19 pandemic, in particular the adoption of several decrees and resolutions relating to OSH. The Committee notes in particular Resolutions No. 52/020 (13 March 2020) and No. 54/020 (19 March 2020) of the Ministry of Labour and Social Security, agreed upon in a tripartite setting within the scope of the National Council for Occupational Safety and Health (CONASSAT), which set out provisions and recommendations for risk-prevention measures relating to COVID-19 in the area of work, as well as minimum guidelines to be included in the protocols for prevention, monitoring and action. The Committee also notes the Resolution of the General Inspectorate of Labour and Social Security of 14 April 2020, which provides for the establishment of special teams of labour inspectors, led by division directors and coordinators, to organize and monitor compliance with OSH measures within the context of the health emergency.

With regard to the other pending issues, the Committee reproduces the content of its comments adopted in 2019 below.

The Committee notes the observations of the Inter-Union Assembly of Workers – Workers' National Convention (PIT-CNT) on the implementation of Convention No. 161, communicated with the Government's report.

### *A. General provisions*

#### Occupational Safety and Health Convention, 1981 (No. 155)

*Articles 4, 7 and 8 of the Convention. Formulation of a national policy and adoption of legislation on occupational safety and health, in consultation with the representative organizations of employers and workers concerned*. Further to its previous comments, the Committee notes that, within the framework of Act No. 19172 on the regulation and control of cannabis, and Decree No. 120/2014, regulating that Act, Decree No. 128/016 of 2 May 2016 has been adopted, establishing the procedure for the action in relation to the consumption of alcohol, cannabis and other drugs in the workplace. The Committee welcomes the Government's indication in its report that draft Decree No. 128/016 was approved by CONASSAT in 2015.

The Committee notes that section 3 of Decree No. 128/016 provides that in joint health and safety bodies (created within the framework of Decree No. 291/007, which implements the provisions of the Convention), and in sectorial industrial relations bodies, systematic guidelines and procedures to detect situations in which alcohol and other drugs are being consumed shall be adopted, and actions shall be developed for consumption prevention and early detection, with a view to facilitating early intervention. The Committee also notes the Government's indication in its report that in 2016 a sub-working group was established within CONASSAT to draw up a national OSH policy, and continued its activities in 2017. The Committee also notes the information provided by the Government on the adoption of a series of OSH decrees (Decrees Nos 119/017, 143/017 and 7/018) in consultation with the representative organizations of employers and workers concerned and on the preparation of a compendium of rules on OSH. ***The Committee requests the Government to continue providing information on the formulation of the national policy on OSH in consultation with the most representative organizations of employers and***

***workers concerned. The Committee also requests the Government to continue providing information on all periodical reviews of the safety and health of workers and the working environment conducted within the framework of CONASSAT.***

### Occupational Health Services Convention, 1985 (No. 161)

*Articles 3, 4 and 6 of the Convention. Progressive development of occupational health services in consultation with the most representative employers' and workers' organizations. Legislation.* The Committee previously noted that the second paragraph of section 16 of Decree No. 127/014, which regulates the application of the Convention in all activities, provides that, within five years of the entry into force of the Decree, all of the branches of activity shall have occupational health and prevention services.

The Committee notes the PIT-CNT's indication in its observations that the time limits established by Decree No. 127/014 have now passed, and compliance with the Decree has been very limited, as the great majority of companies have not established occupational health services. In this respect, the Committee notes that Decree No. 127/014 has been amended by Decree No. 126/019, of 6 May 2019, which was agreed in CONASSAT. The Committee notes, in particular, that section 1 of Decree No. 126/019 sets aside the time limit envisaged in section 16(2) of Decree No. 127/014 and, consequently, provides that: (i) occupational health and prevention services shall be established in companies and institutions with more than 300 workers, irrespective of their area of activity or nature; (ii) this requirement shall be gradually extended to include companies with between 50 and 300 workers, in accordance with the list of branches and activity sectors that CONASSAT will submit to the executive; and (iii) all companies and institutions with more than five workers, irrespective of the nature of their activity, shall set up occupational health and prevention services within a maximum of 18 months from the entry into force of Decree No. 126/019. The Committee also notes that section 3 of the Decree specifies that all of the companies and institutions covered by the requirement to have occupational health and prevention services shall have 180 days from the entry into force of the Decree on the expiry of the corresponding deadline to complete the establishment of such services.

The Committee notes the Government's indication that, irrespective of the number of workers, occupational health services are currently compulsory in the chemicals, drug, pharmaceutical, fossil fuel and allied industries (pursuant to Decree No. 128/014, as amended by Decree No. 109/017 of 24 April 2017); in collective healthcare institutions, medical mutuals and cooperatives (under Decree No. 197/014, of 16 July 2014); in the dairy and non-alcoholic drinks, beer and malted barley industries, which form part of the group of activities relating to the processing and preservation of food, drinks and tobacco (pursuant to Decree No. 242/018, of 6 August 2018); in activities deemed to be dock work (under section 15 of Decree No. 394/018, of 26 November 2018) and, finally, in some activities in the refrigeration and metal products, machinery and equipment industries (pursuant to Decree No. 127/019 of 6 May 2019). ***The Committee requests the Government to continue providing information on the progress made in the establishment of occupational health services for all workers in all branches of economic activity and in all companies. In particular, the Committee requests the Government to provide information on the gradual extension to companies with between 50 and 300 workers of the requirement to have occupational health and prevention services, including the decrees adopted to extend the requirement, as well as on the inclusion of companies with between five and 50 workers.***

## *B. Protection against specific risks*

### Asbestos Convention, 1986 (No. 162)

*Articles 3(1) and 5 of the Convention. Measures for the prevention and control of, and protection of workers against health hazards due to occupational exposure to asbestos. Inspection system and sanctions.* The Committee previously noted that Decree No. 154/002 prohibits the manufacture, import and marketing of asbestos and requested the Government to provide information on the inspections conducted to control the prohibition of asbestos. In this respect, the Committee notes the Government's indication that: (i) inspections and controls relating to asbestos are conducted by the Environmental Working Conditions Division (CAT) of the General Labour and Social Security Inspectorate of the Ministry of Labour and Social Security, the Hazard Management Unit of the State Insurance Bank and the Ministry of Public Health; (ii) training for the personnel of the General Labour Inspectorate enables them to identify specific cases of exposure to asbestos; (iii) if the CAT detects the presence of asbestos in inspected workplaces, it shall immediately order the corresponding preventive measures, the removal of the carcinogenic product and the monitoring of the workers' health, and may even order closures in the event of non-compliance; and, (iv) either the General Labour Inspectorate or the Ministry of Public Health shall impose sanctions for failure to comply with the prohibition of the manufacture and marketing of products containing asbestos, while the National Directorate of the Environment, of the Ministry of Housing, Land Management and the Environment shall impose sanctions for failure to comply with the prohibition of marketing waste containing asbestos.

*Article 17. Demolition of plants or structures containing asbestos and removal of asbestos. Preparation of a work plan in consultation with the workers or their representatives.* ***Noting that no information has been provided in this respect, the Committee once again requests the Government to adopt the necessary measures to ensure that: (i) the demolition of plants or structures containing friable asbestos insulation materials, and the removal of asbestos from buildings or structures in which asbestos is liable to become airborne, are undertaken only by employers or contractors recognized by the competent authority as qualified to carry out such work; and (ii) employers or contractors shall draw up a work plan before commencing demolition work, in consultation with the workers or their representatives.***

*Article 19. Removal of waste containing asbestos.* In reply to its previous comments, the Committee notes the Government's references to section 21 of Act No. 17283 on environmental protection, as amended in 2019, which provides, firstly, that it is in the general interest to protect the environment against any effects that may derive from the production, handling and any waste management operations and their elements, whatever their type and throughout their life cycle and, secondly, that the Ministry of Housing, Land Management and the Environment shall issue and apply the necessary measures to regulate the management of waste, of whatever type, including the production, collection, transport, storage, marketing, recycling and other forms of recovery, treatment and final disposal. The Committee notes that the Government has provided information on the Hazardous Waste Removal Guide, which was drawn up with the aim of training municipal personnel in the management of such waste, including asbestos, and the indication that there is a list of registered operators authorized to handle, transport, destroy and dispose of waste, including hazardous waste. ***The Committee requests the Government to provide information on the measures taken to ensure that: (i) employers are required to remove waste containing asbestos in such a manner that it does not present a risk to the health of the workers concerned, including those handling asbestos waste, or the population living in the vicinity of the company; and (ii) the competent authority and the employers are required to adopt appropriate measures to prevent pollution of the general environment by asbestos dust released from workplaces.***

*Article 22(2). Establishment by employers of written policies and procedures on measures for the education and periodic training of workers on asbestos hazards.* ***Noting that information has not been provided in this respect, the Committee once again requests the Government to adopt the necessary measures to ensure that employers establish written policies and procedures on measures for the education and periodic training of workers on asbestos hazards and methods of prevention and control.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Bolivarian Republic of Venezuela

### Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)

The Committee notes the observations of the Confederation of Workers of Venezuela (CTV), received on 2 September 2015, and of the National Union of Workers of Venezuela (UNETE), received on 2 October 2015, and also the Government's reply to the latter, received on 8 December 2015. The Committee also notes the joint observations sent by UNETE, the CTV, the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), which were received on 8 and 12 September 2016, and also the Government's reply, received on 11 November 2016.

*Articles 4 and 8 of the Convention. Formulating, implementing and periodically reviewing a coherent national policy on occupational safety and health and the working environment, and measures to give effect to the above-mentioned national policy in consultation with the most representative organizations of employers and workers concerned.* In its previous comments, the Committee noted the Government's indication that in 2014 round-table meetings were held on occupational safety and health (OSH) conditions in various sectors of the economy with the participation of representatives of the most representative organizations of workers and employers. The Committee notes the Government's indication in its report that the "National policy on prevention, safety and health at work" is defined in the Basic Act on prevention, conditions of work and the working environment (LOPCYMAT) and reiterates the relevant legal provisions. The Committee notes with ***regret*** that the Government does not refer to periodic reviews of national policy or to the manner in which consultations are held, nor does it mention which workers' and employers' organizations have been consulted in this regard. ***The Committee therefore once again requests the Government to provide information on the content of its national OSH policy (beyond the provisions of LOPCYMAT). The Committee also requests the Government to provide specific information on the consultations held with the most representative employers' and workers' organizations concerned regarding the formulation, implementation and review of its national policy, as referred to in Article 4, and on the adoption of the measures referred to in Article 8.***

*Article 5(e). Protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the national OSH policy.* In its previous comment, the Committee noted the repeated allegations of various workers' organizations denouncing the unjustified

dismissal of prevention delegates. The Committee also notes that both the CTV and UNETE in their respective observations, and UNETE, the CTV, the CGT and CODESA in their joint observations, reiterate these allegations. The Committee notes with ***deep regret*** that the Government does not provide any information on this matter. The Committee recalls that, as stated in paragraph 26 of its 2009 General Survey, *ILO standards on occupational safety and health*, the basic principle that workers and their representatives should be protected from victimization pursuant to *Article 5(e)* is one of the main elements to be included in the national policy, and is indicative of the central importance attributed to this principle. ***The Committee urges the Government to examine, together with the above-mentioned trade unions, the situation of all prevention delegates who have been the victims of harmful action and, in cases where they have been dismissed as a result of actions properly taken by them in conformity with the policy referred to by Article 4 of the Convention, to ensure that they are reinstated in their posts without loss of benefits. The Committee requests the Government to provide information in this respect.***

*Articles 6 and 15. Functions and responsibilities; coordination.* The Committee notes the Government's statement, in reply to its previous request, that the National Council for Occupational Safety and Health established pursuant to section 36 of the LOPCYMAT is not operational. ***The Committee requests the Government to provide information on its plans to implement section 36 of the LOPCYMAT with regard to making the above-mentioned Council operational. The Committee also requests the Government to provide information on the measures taken or envisaged to ensure the necessary coordination between the various authorities and bodies responsible for giving effect to the provisions of the Convention. The Committee further requests the Government to provide information on consultations regarding these measures held with the most representative organizations of employers and workers, and also the results thereof.***

*Article 7. Reviews, either overall or in respect of particular areas, carried out at appropriate intervals.* In its previous comment, the Committee observed that the information provided by the Government on reviews already undertaken or being undertaken in specific sectors, as set out in *Article 7* of the Convention, was of a general nature and did not enable it to assess whether these reviews gave effect to this Article of the Convention. The Committee notes the Government's indication that industries carry out mandatory periodic reviews and report occupational diseases to the National Institute for Occupational Prevention, Health and Safety (INPSASEL), which compiles and standardizes this information, issues alerts and triggers the corresponding actions. The Government also communicates epidemiological bulletins for 2017 and part of 2018 containing statistical data disaggregated by sector on occupational diseases and accidents. However, the Committee notes that the Government does not indicate which problems it has been possible to identify as a result of the statistics or any effective methods developed to resolve them. ***The Committee requests the Government to provide specific, detailed information on the main problems identified as a result of the reviews carried out under Article 7 of the Convention, effective methods developed to resolve them, priorities of action taken or envisaged, and evaluation of the results obtained.***

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

***[The Government is asked to reply in full to the present comments in 2022.]***

## Zimbabwe

**Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 2003)
**Occupational Health Services Convention, 1985 (No. 161)** (ratification: 2003)
**Asbestos Convention, 1986 (No. 162)** (ratification: 2003)
**Chemicals Convention, 1990 (No. 170)** (ratification: 1998)
**Prevention of Major Industrial Accidents Convention, 1993 (No. 174)** (ratification: 2003)
**Safety and Health in Mines Convention, 1995 (No. 176)** (ratification: 2003)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine the following Conventions together: Conventions Nos 155 (occupational safety and health), 161 (occupational health services), 162 (asbestos), 170 (chemicals), 174 (prevention of major industrial accidents) and 176 (safety and health in mines).

The Committee takes note of the Government's report and the supplementary information in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 16 September 2020. The Committee also notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) received on 29 September 2020, as well as the Government's reply in its supplementary report.

*Draft Occupational Safety and Health Act.* The Committee notes the information provided by the Government in its report indicating that the new Occupational Safety and Health (OSH) Act, with the objective of achieving greater compliance with the OSH Conventions ratified by Zimbabwe, has been submitted to the Cabinet Committee on Legislation for subsequent submission to Cabinet. The Committee also notes the statement of the ZCTU that it has been party to the development of the Act. ***In this context, the Committee requests the Government to take into account the comments that it is making on the application of Conventions Nos 155, 161, 162, 170, 174 and 176. The Committee requests the Government to provide information on the developments in this regard and to transmit a copy of any new legislation once it has been adopted.***

## A. General provisions

### Occupational Safety and Health Convention, 1981 (No. 155)

*Application of the Convention in practice.* The Committee notes that, according to the observations of the ITUC, in 2018, the National Social Security Authority (NSSA) registered a spike in fatal workplace accidents, with 5,965 injuries and 70 fatalities recorded compared to 5,007 injuries and 65 fatalities recorded in 2017, indicating a 19 per cent increase. Mining, agriculture and forestry, metal production, transport and storage and manufacturing are among the most accident-prone sectors. In particular, the working conditions of healthcare workers in Zimbabwe is dire and health facilities are understaffed and have low OSH standards. The situation has worsened with the COVID-19 pandemic breakout as hospitals are faced with unreliable access to water, which impedes their efforts to implement hygiene measures. The ITUC calls for the taking of preventive and protective measures to fight COVID-19 and for the provision of adequate personal protective gear to healthcare workers.

The Committee notes the Government's statement that it has embarked on joint inspections so as to effectively carry out monitoring and inspections in workplaces on OSH matters even during the COVID-19 lockdown period. The Government indicates that 3,767 inspections have been undertaken for the period from 1 September 2019 to 30 September 2020, including 2,636 factory inspections and assessments conducted at various workplaces. The Committee also notes the information provided by the Government in its report on Convention No. 170 that it remains a challenge to transfer cases of violations detected to the court due to limited understanding of the judicial system on OSH issues and weak deterrent penalties. The Government indicates that, in this regard, awareness-raising activities and trainings are organized for the judicial system in order to facilitate prosecution. ***The Committee requests the Government to provide its comments with respect to the observations of the ITUC. It also requests the Government to provide information on any measures taken or envisaged to address the increasing number of occupational accidents, and to provide statistics such as on occupational accidents and diseases broken down by sector of occupation, age and gender and on the development of the number of the workforce. The Committee further requests the Government to take adequate preventive and protective measures to ensure a safe working environment for all workers in the context of the COVID-19 pandemic, particularly healthcare workers.***

*Article 13. Protection of workers removed from situations presenting imminent and serious danger.* The Committee notes the Government's indication, in reply to its previous comments, that paragraph 5(d) of the national OSH policy provides for workers' right to refuse to undertake any work that has not been rendered safe. The Committee also notes the Government's reference to the draft OSH Act, section 22(2) of which provides for workers' right to refuse to do work which is likely to cause imminent danger to his or her safety or health. ***The Committee requests the Government to take measures to ensure that workers who have removed themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health shall be protected from undue consequences, and to provide information on any legislation adopted in this respect.***

*Article 16. Duties of the employer to ensure safety at the level of the undertaking.* The Committee previously noted that the national legislation referenced by the Government did not appear to impose a general duty on employers to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk.

The Committee notes the Government's information that the draft OSH Act explicitly outline the duties of employers to provide a safe working environment (section 21). ***The Committee requests the Government to take measures to ensure the draft OSH Act provides for a general duty on employers to, so far as is reasonably practicable, ensure safety at the level of the undertaking, as required by Article 16 of the Convention.***

## B. Protection from specific risks

### Asbestos Convention, 1986 (No. 162)

*Legislation.* The Committee previously noted the Government's indication that it envisaged the adoption of legislation on OSH and of regulations on asbestos, which would give wider coverage to the control of occupational exposure to chrysotile (white asbestos). The Committee notes the observations of

the ZCTU, according to which, the current regulations do not cover all forms of asbestos. The Committee also notes the Government's indication in its report that the envisaged regulation on asbestos will cover all forms of asbestos as provided for by *Article 2* of the Convention and give effect to all the provisions of the Convention. ***Noting that the Government has been referring to the asbestos regulations since 2014, the Committee requests the Government to ensure that, in the context of the current legislative reform, full effect is given to: Article 14 (labelling of asbestos and products containing asbestos); Article 15(4) (provision of adequate respiratory protective equipment by the employer); Article 17 (demolition of plants and structures containing asbestos); and Article 20(4) (workers' and their representatives' right to request to appeal to the competent authority concerning the results of the monitoring of the working environment). The Committee also requests the Government to continue providing information on any progress made regarding the adoption of the envisaged regulation on asbestos, and to provide a copy once adopted.***

*Article 6(2) and (3) of the Convention. Cooperation between employers and preparation of procedures for dealing with emergency situations.* The Committee previously noted the promotional activities carried out by the National Social Security Authority (NSSA for the establishment of emergency preparedness programmes and industrial assessments on this subject in all major sectors of the economy.

The Committee notes the Government's indication that the envisaged regulation on asbestos in this regard will provide for the establishment of a cooperation mechanism between employers operating at the same workplace, as well as the draft OSH Act. ***The Committee requests the Government to ensure that the envisaged regulation on asbestos and the new OSH Act give full effect to this Article. Pending their adoption, the Committee requests the Government to provide information on how employers undertaking activities simultaneously at one workplace cooperate in order to comply with health and safety measures in practice, as prescribed by Article 6(2) of the Convention.***

*Article 15(1) and (2). Exposure limits and periodic review.* The Committee previously noted that the occupational exposure limit was fixed at 0.5f/ml, with a review planned aimed at lowering the limit to 0.1f/ml. In this respect the Committee notes the Government's indication that the exposure limit for chrysotile asbestos has been reviewed and is set at 0.1f/ml. The Government also states that the exposure limit is provided for by the 2017 NSSA Guidelines for Occupational Exposure Limits for Chemical Contaminants and Dusts, and that the guidelines will further be upgraded to regulatory provisions under the envisaged hazardous substances regulation and asbestos regulation. ***The Committee requests the Government to continue to provide information on any progress made regarding the adoption of relevant regulatory provisions prescribing limits for the exposure of workers to asbestos or other exposure criteria and the periodic review in this regard, due consideration being given to technological progress and advances in technological and scientific knowledge.***

*Article 21. Medical examinations.* Following its previous comments, the Committee notes the Government's repeated reference to the Third Schedule of SI (Statutory Instrument) 68 of 1990 on Accident Prevention and Workers Compensation (sections 1(l) and 5(c)) and the Factories and Works (General) Regulations of 1976 (section 11), which provide for medical examinations for workers potentially exposed to harmful substances in all industries, including the chrysotile asbestos industry. Additionally, Part V of the Pneumoconiosis Act provides for medical examinations and, in particular, chest x-rays, for workers working in dusty occupations (defined in the Act to include work in or on a mining location or any other area where there is a dust-producing process). The Government also indicates that specific provisions on medical examinations will further be provided for by the envisaged regulation on asbestos. The Committee recalls that, pursuant to *Article 21(1)* of the Convention, workers must be provided with such medical examinations as are necessary to supervise their health in relation to the occupational hazard, and to diagnose occupational diseases caused by exposure to asbestos, which may require examination after the termination of employment. ***The Committee requests the Government to ensure that specific provisions on medical examination for workers exposed to asbestos, including after their employment is terminated or ended, are included in the envisaged regulation on asbestos, in conformity with Article 21 of the Convention. Pending the adoption of such regulation, the Committee requests the Government to provide information on how medical examinations for workers exposed to asbestos are carried out in practice, under the current legislative provisions of a general nature.***

*Application of Convention No. 162 in practice.* The Committee notes the Government's indication that there have not been any contraventions reported to date. It also states that the OSH Inspectorate of the NSSA regularly carries out inspections in chrysotile asbestos manufacturing factories to ensure their compliance with the Factories and Works Act and other related legislative provisions. The Government further indicates that there are challenges of implementation due to limited resources with respect to the acquisition of equipment and accessories. ***The Committee requests the Government to strengthen its efforts to provide statistical information on the application of the Convention, including the relevant reports of the NSSA in this regard, specifically information on the number of workers covered by the legislation, the number of occupational diseases reported as being caused by asbestos and the number and nature of contraventions reported.***

### Chemicals Convention, 1990 (No. 170)

*Article 6(1) of the Convention. Classification systems.* Following its previous comments, the Committee notes the Government's indication that SI 12 of 2007 on Hazardous Substances, Pesticides and other Toxic Substances Regulations is repealed by SI 268 of 2018 on Hazardous Substances General Regulations, which provides for labelling for different hazardous substances. The Committee observes that SI 268 of 2018 does not appear to contain specific criteria for the classification of all chemicals. The Government indicates that, considering the limitation in national legislation with regard to the requirements of *Article 6(1)* of the Convention, a specific regulation addressing hazardous chemical agents will be formulated together with the draft OSH Act, in order to provide specific guidance on the classification and labelling of chemicals in accordance with the Globally Harmonized System of Classification and Labelling of Chemicals. ***The Committee therefore requests the Government to ensure the establishment of systems and specific criteria for the classification of all chemicals, as well as procedures for their labelling, including through the adoption of the envisaged regulation on hazardous chemical agents. Pending the adoption of such regulation, the Committee requests the Government to provide information on how chemicals are classified in practice as well as their labelling.***

*Application of Convention No. 170 in practice.* The Committee previously noted that the NSSA and the Environmental Management Agency (EMA) monitor and enforce the legislative provisions relative to the registration and labelling of chemicals and impose penalties when violations are detected.

The Committee notes that, according to the observations of the ZCTU, due to the limits of the monitoring system, there are still cases in which employers expose workers to hazardous work environments where non-labelled chemicals are used. The Committee notes the Government's indication that during 4,285 inspections in various sectors, 117 cases of chemical exposure were discovered, including 17 in agriculture, but that the statistics are not disaggregated by specific chemical stressor. The Government also states that improvement notices were issued in most cases of violations detected. ***The Committee requests the Government to continue providing information on the number of inspections conducted in this regard, the number and nature of contraventions reported, and the number and nature of penalties imposed.***

### Prevention of Major Industrial Accidents Convention, 1993 (No. 174)

*Articles 4 and 17 of the Convention. Formulation, implementation and periodic review of a coherent national policy and establishment of a comprehensive siting policy.* Following its previous comments, the Committee notes the observations of the ZCTU that the Government has not started the legislative review regarding the siting of major hazard installations.

The Committee also notes the Government's indication in its report that a specific regulation on the prevention of major industrial accidents will be developed incorporating key provisions of the Convention. The Government states that this envisaged regulation will include provisions on the siting of major hazard installations. The Committee further notes the Government's indication that the national OSH policy, as revised in 2019, indicates in paragraph 4.18 that major accident hazards shall be managed through an effective systems approach including proper siting of the major hazard installation following policies and procedures, as spelt out by the Government from time to time. ***With reference to the additional points raised in the corresponding direct request, the Committee urges the Government to strengthen its efforts to give full effect to the Convention. It requests the Government to continue providing information on any progress in this regard, including provisions on the siting of major hazard installations, and to provide a copy of the text of the above regulation once adopted. The Committee also requests the Government to continue providing information on the implementation and periodic review of the national OSH policy regarding the aspects specific to major hazard installations, in consultation with the most representative organizations of employers and workers and with other interested parties who may be affected.***

## C. Protection in specific branches of activity

### Safety and Health in Mines Convention, 1995 (No. 176)

*Article 16(2) of the Convention. Inspection services and application of the Convention in practice.* The Committee notes the reference of the ITUC in its observations to several fatal accidents in the mining industry registered in 2018–19, including two major accidents which killed 37 persons. The ITUC also refers to the 2018 report of the Zimbabwe Chamber of Mines, according to which 81 fatal accidents were recorded in 2018, in comparison with 32 in 2017, representing an increase of 153 per cent. Falls of ground (48 per cent), gas accidents (14.8 per cent) and shaft accidents (7.4 per cent) were the major causes of fatal accidents. The ITUC indicates that the high rate of fatal accidents results from poor design of mining sites and a lack of supervision of mining operations. It alleges that there is non-compliance with safety and hygiene rules in the mining sector aimed at protecting workers from COVID-19. The Committee further notes the observations of the ZCTU referring to the limited resources available that hamper the implementation of monitoring activities.

The Committee notes the Government's indication that limited resources are available for monitoring, and that this results from an unfavourable economic situation. The Government also states that strategies will be put in place to ensure that the few available resources are used for effective inspection activities. ***The Committee notes with concern the significant increase in fatal accidents in the mining sector, and urges the Government to take the necessary measures to ensure the availability of the necessary resources for appropriate inspection services in this regard. It requests the Government to provide information on the number of inspections undertaken in mines, the number of cases of non-compliance detected and the issues to which they relate, as well as the remedial measures ordered and penalties imposed. It further requests the Government to provide detailed information on the number of occupational accidents in the mining sector, including fatal occupational accidents, disaggregated by cause and by age.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 13** *(Bolivarian Republic of Venezuela);* **Convention No. 45** *(Kyrgyzstan, Tajikistan, Tunisia, Uganda, Bolivarian Republic of Venezuela, Viet Nam);* **Convention No. 62** *(Democratic Republic of the Congo, Tunisia);* **Convention No. 115** *(Tajikistan, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Bermuda, Guernsey and Jersey, Uruguay);* **Convention No. 119** *(Democratic Republic of the Congo, Kyrgyzstan, Tajikistan, Turkey, Ukraine);* **Convention No. 120** *(Democratic Republic of the Congo, Kyrgyzstan, Tajikistan, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, Bolivarian Republic of Venezuela, Viet Nam);* **Convention No. 127** *(Turkey, Bolivarian Republic of Venezuela);* **Convention No. 136** *(Uruguay);* **Convention No. 139** *(Netherlands, Russian Federation, Ukraine, Uruguay, Bolivarian Republic of Venezuela);* **Convention No. 148** *(Netherlands, Tajikistan, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, United Republic of Tanzania, Zambia);* **Convention No. 155** *(Belize, Brazil, China, Côte d'Ivoire, Mali, Tajikistan, Turkey, Ukraine, Uruguay, Bolivarian Republic of Venezuela, Viet Nam, Zimbabwe);* **Convention No. 161** *(Côte d'Ivoire, Turkey, Ukraine, Uruguay, Zimbabwe);* **Convention No. 162** *(Uganda, Uruguay, Zimbabwe);* **Convention No. 167** *(Belgium, China, Turkey, Uruguay);* **Convention No. 170** *(Belgium, China, Cyprus, Netherlands, United Republic of Tanzania);* **Convention No. 174** *(Ukraine, Zimbabwe);* **Convention No. 176** *(Mongolia, Turkey, Ukraine, United States of America, Uruguay, Zambia, Zimbabwe);* **Convention No. 184** *(Ukraine, Uruguay);* **Convention No. 187** *(Burkina Faso, Chile, Côte d'Ivoire, Iraq, Kazakhstan, Portugal, Turkey, United Kingdom of Great Britain and Northern Ireland, Viet Nam).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 45** *(Ukraine).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 13** *(Uruguay)*; **Convention No. 45** *(Turkey, United Kingdom of Great Britain and Northern Ireland: Falkland Islands: Malvinas and Gibraltar)*; **Convention No. 115** *(United Kingdom of Great Britain and Northern Ireland: Bermuda, Guernsey and Jersey)*; **Convention No. 119** *(Uruguay)*; **Convention No. 120** *(Uruguay)*; **Convention No. 136** *(Uruguay)*; **Convention No. 139** *(Uruguay)*; **Convention No. 148** *(United Kingdom of Great Britain and Northern Ireland: Guernsey, Uruguay)*; **Convention No. 176** *(Uruguay)*; **Convention No. 184** *(Uruguay)*.

# Social security

## Armenia

### Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 2004)

The Committee notes the observations of the Confederation of Trade Unions of Armenia (CTUA) communicated with the Government's report.

*Article 11 of the Convention. Compensation of industrial accidents in the event of the insolvency of the employer or insurer.* In its previous comments, the Committee requested the Government to take the necessary measures, without further delay, to ensure that the 800 injured workers employed by companies liquidated after 2004 who, following the adoption of Governmental Decision No. 1094-N of 2004, had not been paid compensation, be duly compensated. The Committee notes the indication by the Government that there are currently around 210 employees of liquidated companies who are entitled to compensation for a work-related accident but who have not yet been compensated, because of the non-existence of the subsequent proprietors of the liquidated companies. The Committee further notes that, according to the Government, new measures are under discussion, with a view to implementing the right to compensation of the persons concerned. In this regard, the Committee notes the indication by the CTUA that the Ministry of Labour and Social Issues has submitted for public discussion a draft law on amendments and changes to the Civil Code, that would provide for the payment of compensation out of the State Budget for workers who have not received any compensation following a work-related accident or occupational disease. ***Recalling that it has been raising this issue since 2013, the Committee urges the Government to provide compensation for the above-mentioned workers currently seeking it, and for similarly situated workers henceforth. In this connection, the Committee expects that the Government will soon report on the adoption of measures necessary to ensure the due and effective compensation of injured workers and their dependents in the event of the insolvency of the employer or insurer and requests the Government to provide information on any measures taken or envisaged in this regard.***

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that member States for which the Convention is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept its Part VI (see GB.328/LILS/2/1). Conventions Nos 121 and 102 reflect the more modern approach to employment injury benefits. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group and to consider ratifying Convention No. 121 or Convention No. 102 (Part VI) as the most up-to-date instruments in this subject area.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Djibouti

### Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1978)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1(2) of the Convention. Equality of treatment in relation to compensation for industrial accidents.* Ever since the Convention was ratified in 1978, the Committee has been drawing the Government's attention to the need to amend section 29 of Decree No. 57-245 of 1957 concerning compensation for industrial accidents and occupational diseases in order to bring the national regulations into conformity with *Article 1(2)* of the Convention, according to which the nationals of States that have ratified the Convention and their dependants must receive the same treatment as Djibouti grants to its own nationals in respect of accident compensation. Under the terms of the Decree No. 57-245 of 1957, unlike nationals, foreign workers injured in industrial accidents who transfer their residence abroad no longer receive a periodic payment but a lump-sum payment equal to three times the periodic payment they received previously. The Committee notes that the Government refers in its report to Act No. 154/AN/02/4ème-L of 31 December 2002 codifying the functioning of the Social Protection Institute (OPS) and the general retirement scheme for employees, indicating that the Act does not prescribe different treatment for national and foreign employees and their dependants with regard to compensation for industrial accidents and, in accordance with the Convention, does not impose any residence requirement for foreign workers to be entitled to benefits. The Committee observes, however, that the above-mentioned Act does not primarily deal with periodic payments for industrial accidents but rather with the issue of those payments being combined with retirement benefits. It further observes that, in its report on the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Government continues to refer to the

provisions of Decree No. 57-245 of 1957 in the context of the regulations governing periodic payments for industrial accidents. ***In view of the above, the Committee again requests that the Government amend section 29 of Decree No. 57-245 of 1957 so as to bring the national legislation into full conformity with Article 1(2) of the Convention.***

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

### Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1978)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 1 of the Convention. Setting up a system of compulsory sickness insurance.* The Committee notes that Act No. 212/AN/07/5ème-L establishing the National Social Security Fund (CNSS) provides that new complementary social instruments such as sickness insurance will be instituted by means of regulations (section 5 of the Act). It also notes the adoption of Act No. 199/AN/13/6ème-L of 20 February 2013 extending treatment coverage to self-employed workers and of Decree No. 2013-055/PR/MTRA of 11 April 2013 establishing CNSS registration procedures and contributions for self-employed workers. The Government states that these items of legislation are the precursor to establishing a universal sickness insurance system in Djibouti in the near future. ***The Committee hopes that once this insurance system is established it will cover the payment of sickness benefits to insured persons, which are currently covered by employers, contrary to the terms of the Convention. It requests the Government to keep it informed of any developments regarding the introduction of a universal sickness insurance system.***

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

### Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37) (ratification: 1978)

### Invalidity Insurance (Agriculture) Convention, 1933 (No. 38) (ratification: 1978)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Establishment of a compulsory invalidity insurance scheme.* With reference to its observation relating to the Sickness Insurance (Industry) Convention, 1927 (No. 24), the Committee recalls that the national social protection system has been undergoing restructuring for a number of years, which involves the merger of various insurance funds in the interests of more efficient management. In this context, although the social protection system has no specific branch for invalidity benefits, the Government indicates that Act No. 154/AN/02/4ème-L of 31 January 2002 codifying the operation of the Social Protection Institute (OPS) and the general retirement scheme for salaried employees, contains several provisions that authorize workers aged 50 years and over who are affected by a permanent physical or mental impairment to claim an early retirement pension when they have accrued a minimum of 240 contribution months (section 60 ff.). The Committee emphasizes that, even though it is justified in the context of early retirement, the fixing of a minimum age at which a person can receive invalidity benefit, as set forth by Act No. 154, is in breach of *Article 4* of Convention No. 37 and the Invalidity Insurance (Agriculture) Convention, 1933 (No. 38). Moreover, the length of the qualifying period for entitlement to invalidity benefit must not, according to *Article 5(2)* of Conventions Nos 37 and 38, exceed 60 contribution months. ***In view of the failure of these provisions to give effect to the main requirements of Conventions Nos 37 and 38, the Committee requests the Government to carry out the feasibility studies needed to establish an invalidity insurance scheme.***

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

## Guinea

### Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1967)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 5 of the Convention. Payment of benefits in the case of residence abroad.* Referring to its previous comments, the Committee notes with ***interest*** the conclusion in 2012 of the Economic Community of West African States (ECOWAS) General Convention on Social Security, which aims in particular to enable migrant workers who have worked in one of the 15 ECOWAS member States to exercise their right to social security in their country of origin through the coordination of national social security systems. ***However, since Cabo Verde is the only other ECOWAS member State that has ratified Convention No. 118, the Committee requests the Government once again to indicate whether, as it understands from its reading of section 91 of the Social Security Code, nationals of any State that has accepted the obligations of the Convention for the corresponding***

***branch should in principle be able to claim payment of their benefits in the case of residence abroad. If so, the Committee requests the Government to indicate whether a procedure for the transfer of benefits abroad has been established by the National Social Security Fund to meet any requests for the transfer of benefits abroad. In addition, the Committee requests the Government to clarify whether any Guinean nationals transferring their residence abroad would also be entitled to have their benefits transferred abroad, in accordance with the principle of equal treatment established under Article 5 of the Convention.***

*Article 6. Payment of family benefit.* Referring 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(2) of the Social Security Code, to be entitled to family benefit, 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 the 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. ***The Committee notes that the Government's report does not provide any information in this respect and hopes that the Government will be able to confirm formally in its next report that the payment of family benefit 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 in the territory of one of these States and not in Guinea. The Committee also requests information as to how the condition of residence is dispensed with in these cases for the application of section 99(2) of the 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 he or she 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 is raising other matters in a request addressed directly to the Government.

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

## Haiti

### Workmen's Compensation (Agriculture) Convention, 1921 (No. 12) (ratification: 1955)

### Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1955)

### Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1955)

### Sickness Insurance (Agriculture) Convention, 1927 (No. 25) (ratification: 1955)

### Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1955)

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 25 September 2020, and ***requests the Government to provide information in response to these observations.***

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 1 September 2019, concerning the application of Conventions Nos 12, 17, 24, 25 and 42. The Committee notes that the CTSP alleges the dysfunction of the Board of Directors of Social Security Organisations (CAOSS), as well as the need to carry out actuarial studies and audits on the Employment Injury, Sickness and Maternity Insurance Office (OFATMA) and resuming discussions on a thorough reform of the Ministry of Social Affairs and Labour (MAST), in the framework of social dialogue. At the same time, the Committee notes the indication that a campaign for the ratification of Convention No. 102 and the implementation of Recommendation No. 202 was conducted. ***The Committee requests the Government to provide its comments on these observations.***

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 30 August 2017 and 29 August 2018, and the observations of the Association of Haitian Industries (ADIH), received on 31 August 2018, concerning the application of ratified Conventions on social security. The Committee notes with ***deep concern*** that the Government's reports for Conventions Nos 12, 17, 24, 25 and 42 have not been received. While it is therefore bound to repeat its previous comments initially made in 2012, the Committee notes the Government's communication received on 30 October 2018 in which it informs the Committee that, further to the conclusions of the Conference Committee on the Application of Standards, it has requested ILO technical assistance with a view to helping in the presentation of the reports due, strengthening

the inspection services, consolidating social dialogue for the continuation of social reforms, and addressing the other points raised by the Conference Committee. The Government adds that it hopes to receive the requested assistance before the next session of the International Labour Conference. ***The Committee hopes that this technical assistance will be provided without delay and that it will give rise to timely delivery of all outstanding reports. It also requests the Government to send its comments on the observations of the CTSP and the ADIH.***

The Committee notes the observations made by the Confederation of Public and Private Sector Workers (CTSP), received on 31 August 2016, by which it reiterated most of the issues raised previously, indicating that, even though some state efforts to increase the coverage of the insurance have been visible, these were focused on the capital city, leaving apart the people living in rural areas.

The Committee notes that on 15 September 2015 the Confederation of Public and Private Sector Workers (CTSP) provided its observations concerning the application of the Conventions under examination. The CTSP indicates that the affiliation of employers to the Employment Injury, Sickness and Maternity Insurance Office (OFATMA), although a legal obligation, is a reality in practice for less than 5 per cent of workers. In the specific case of agricultural workers, the CTSP considers that it is necessary to take urgent measures to extend effective coverage by the OFATMA, as they represent the majority of workers in the country and produce 30 per cent of the gross domestic product, and yet they remain without any social protection.

The Committee is fully aware that the Government indicated in its last report that the Act of 28 August 1967, establishing the OFATMA, covers all dependent workers irrespective of their sector of activity, but that the absence of formal agricultural enterprises means that most agricultural workers are engaged in family subsistence agriculture and are excluded from the scope of the social security legislation. Nevertheless, the Committee observes that the application of the existing legislation appears to give rise to difficulties, even with regard to workers in the formal economy. Moreover, the sickness insurance scheme has never been established, even though the Government has indicated that it is pursuing its efforts to establish progressively a sickness insurance branch covering the whole of the population and to enable OFATMA to regain the trust of the population.

***With a view to better assessing the challenges facing the country in the application of the social security Conventions and providing better support for the initiatives taken in this respect, the Committee requests the Government to provide further information in its next report concerning the functioning of the employment injury scheme administered by OFATMA (numbers covered, amount of contributions collected annually, number of employment accidents and occupational diseases recorded, amount of benefits paid for employment injury). Please include information on strategies for increasing participation in and utilization of OFATMA services by the eligible populations.***

*International assistance.* The Committee notes that the Government is receiving substantial support from the ILO and the international community, particularly in the field of labour inspection. Moreover, since 2010, the ILO and the United Nations system as a whole have made available to the Government their expertise for the establishment of a social protection floor. The Committee considers that it is necessary for the Government to envisage as a priority the establishment of mechanisms to provide the population as a whole, including informal workers and their families, with access to essential health care and a minimum income when their earnings capacity is affected as a result of sickness, employment accident or occupational disease. In this regard, the International Labour Conference adopted the Social Protection Floors Recommendation (No. 202) in 2012, with a view to the establishment of basic social security guarantees to prevent and alleviate poverty, vulnerability and social exclusion. In this connection, the implementation of Conventions and of Recommendation No. 202 should continue in parallel, seeking and exploiting synergies and complementarity.

The Committee recalls that the establishment of a social protection floor was included by the Haitian Government as one of the elements of the Action Plan for National Recovery and Development of Haiti, adopted in March 2010. However, the Government has not yet provided any information on the measures adopted to achieve this objective. The Committee notes, among other matters, the conclusion in 2010 of a national programme for the promotion of decent work which includes an item dedicated to the establishment of the social protection system under the social security Conventions ratified by Haiti.

*Conclusions and recommendations of the Standards Review Mechanism.* The Committee notes that, at its 328th Session in October 2016, the Governing Body of the ILO adopted the conclusions and recommendations formulated by the Standards Review Mechanism Tripartite Working Group (SRM TWG), recalling that Conventions Nos 17, 24, 25 and 42 to which Haiti is party are outdated and charging the Office with follow-up work aimed at encouraging States party only to these Conventions to ratify the following instruments as they represent the most up-to-date standards:

- As regards employment injury: the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102) and accept the obligations in its Part VI.
- As regards medical care and sickness benefit: the Medical Care and Sickness Benefits Convention, 1969 (No. 130) and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Parts II and III.

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

# Kenya

## Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1964)

*Legislative reform.* Further to its previous comments, in which it took note of the ongoing process of amendment of the Work Injury Benefits Act, 2007 (WIBA, 2007) and development of a new legislation that would address current gaps, the Committee notes the indication provided by the Government in its report

that a Bill is now before the National Treasury to seek concurrence on the financial implications if enacted. The Committee further notes with ***interest*** that the Government has initiated a process to develop the Occupational Diseases Fund established by the Bill into a social insurance-based employment injury scheme, and that the first high-level Social dialogue meeting to address this matter was held on 23 September 2020. ***The Committee expects that these legislative developments will give full effect to the Convention and that its comments will be duly taken into account for this purpose. The Committee requests the Government to keep it informed of the adoption of the bill and of the establishment of the Occupational Diseases Fund, and of the adoption of any other measures related to their implementation.***

*Article 5 of the Convention. Payment of compensation for permanent incapacity or death in the form of periodical payments.* In its previous comments, the Committee noted that, in accordance with section 30 of the WIBA, 2007, an employee who suffered permanent disablement was entitled to a lump-sum payment equivalent to 96 months' earnings. It invited the Government to review the WIBA, 2007, so as to compensate victims of occupational accidents suffering permanent incapacity, or their dependants in cases of fatal accidents, with periodical payments and to limit compensation by way of lump sum to cases where the competent authority was satisfied that it would be properly utilized. The Committee notes the indication provided by the Government that the new social insurance-based employment injury scheme "will introduce periodical payments for victims of occupational accidents suffering permanent incapacity or survivors of victims of occupational fatalities", and that in cases of payment of a lump sum, the Government agency under which the scheme will be administered will ensure that compensation will be paid on assurance that the lump sum will be properly utilized. ***The Committee hopes that the Government will take the necessary measures to ensure that permanently injured workers or their dependents, as the case may be, are provided with compensation in the form of periodical payments, in accordance with Article 5 of the Convention, under the new employment injury insurance scheme. The Committee also hopes that, in cases where compensation is paid in the form of a lump sum, the Government will put in place the necessary safeguards to ensure that it is properly used by beneficiaries. The Committee requests the Government to provide information on the measures taken for these purposes upon adoption of the new employment injury insurance scheme.***

*Articles 9 and 10. Provision of medical, surgical and pharmaceutical aid free of charge.* In its previous comments, the Committee noted that section 47 of the WIBA, 2007, provides that an employer must defray reasonably incurred medical expenses which occurred after an occupational accident. The Committee further noted the indication by the Government that the term "reasonable expenses" would be defined at the occasion of the review of the WIBA, 2007, so as to include all medical intervention necessary and welcomed the Government's indication that Clause 55 of the Bill would contain a list of the expenses incurred by an employee as the result of an accident arising out of, and in the course of, the employee's employment to be defrayed by the employer. ***The Committee hopes that the Government will take the necessary measures, without further delay, to ensure that injured workers are provided, free of charge, with all the medical, surgical and pharmaceutical aid as well as with the artificial limbs and surgical appliances that are recognized to be necessary in consequence of accidents at work, without limitation of cost, with a view to give full effect to Articles 9 and 10 of the Convention. The Committee requests the Government to provide information on the legislative provisions and other measures adopted or envisaged for that purpose.***

*Article 11. Compensation of industrial accidents in the event of the insolvency of the employer or insurer.* In its previous comments, the Committee noted that the WIBA, 2007, did not provide the necessary arrangements to ensure in all circumstances, in the event of the insolvency of the employer or insurer, the payment of compensation to workers who suffer personal injury due to industrial accidents, as required by *Article 11* of the Convention. ***The Committee hopes that the Government will take advantage of the ongoing legislative reform to address this issue and requests the Government to provide information on the measures taken or envisaged to ensure that victims of occupational accidents and their dependents are provided with the compensation they are entitled to in all circumstances, in line with Article 11 of the Convention.***

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that member States for which the Convention is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept its Part VI (see GB.328/LILS/2/1). Conventions Nos 121 and 102 reflect the more modern approach to employment injury benefits. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group and to consider ratifying Convention No. 121 or Convention No. 102 (Part VI) as the most up-to-date instruments in this subject area, taking opportunity of the ongoing legislative review and of the establishment of an employment injury insurance scheme.***

## Saint Lucia

### Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1980)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

With reference to its previous observation, the Committee notes the reply of the Government that, contrary to *Article 7 of the Convention,* no provision is made in national legislation for the payment of additional compensation for injured workers requiring the constant help of another person; and that compensation for all expenses (medical, surgical or pharmaceutical, etc.) is limited to 20,000 East Caribbean dollars, whereas no such ceiling is foreseen in the Convention in case of occupational accident (*Articles 9* and *10* of the Convention). The Committee ***regrets*** to note that since the entry into force of the Convention in 1980 the Government has been unable to bring the provisions of the national legislation in conformity with *Articles 7, 9* and *10* of the Convention. ***In this situation, the Committee deems it necessary to ask the Government to undertake an actuarial study which will determine the financial implications of the introduction into the national insurance scheme of the benefits guaranteed by these Articles of the Convention. The Committee wishes to remind the Government of the possibility to avail itself of the technical assistance of the Office in this respect.***

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

## Sierra Leone

### Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1961)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes that the country is mentioned in a special paragraph of the report of the Conference Committee on the Application of Standards for failure to supply information in reply to comments made by the Committee. ***The Committee expects that the Government will be able to report on the application of Convention No. 17 soon and recalls that the technical assistance of the Office is at its disposal.***

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

## Tunisia

### Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1965)

*Articles 4 and 5 of the Convention. Payment of old-age, invalidity and survivors' benefits in the case of residence abroad.* In its previous comments, the Committee requested the Government to bring the legislation into full conformity with the Convention by removing the restrictions relating to the payment of old-age, invalidity and survivors' benefits to Tunisian nationals where the latter are not resident in Tunisia at the date on which the application for benefits is made (section 49 of Decree No. 74-499 of 27 April 1974 and section 77 of Act No. 81-6 of 12 February 1981). The Committee notes the reply provided by the Government in its report concerning the measures taken with a view to ensure the application in practice of *Article 4* and *5* of the Convention. It notes, in particular, that in line with the instructions of the Ministry of Social Affairs of 2007 and 2016 on the application of the Circular of the Tunisian Central Bank No. 93/21 of 10 December 1993, as modified by Circular 2007–21 of 14 August 2007, the National Social Security Fund (CNSS) transfers old-age, invalidity and survivors' benefits abroad to Tunisian nationals living abroad, nationals of countries that have concluded bilateral agreements with Tunisia and nationals of European Union (EU) countries that are not bound by bilateral agreements with Tunisia, when they reside in their country of origin. The Government also indicates that, by virtue of the many bilateral agreements on social security concluded by Tunisia with other countries such as France, pensions are also transferred to third countries bound to both countries by instruments of coordination in the area of social security. Taking this into consideration, the Government is of the view that the incompatibility of the legislation with *Articles 4* and *5* of the Convention is largely superseded by the multiplicity of international social security agreements providing for the export of benefits, which give effect to the above-mentioned Articles in practice. Lastly, the Committee notes once again the Government's indication that a draft law and decree has been prepared with a view to ensuring the conformity of the national legislation with the Government's obligations under the Convention. ***Taking note of the information provided by the Government on the measures taken to ensure in practice the payment of social security benefits to***

***Tunisian nationals residing abroad in the same way as foreign nationals, the Committee recalls that applying the Convention also requires the adoption of legislative provision that give effect to its provisions. The Committee firmly hopes that the Government will adopt, without any further delay, the legislative amendments that are necessary to put the national legislation in full conformity with Articles 4 and 5 of the Convention by removing the condition of residence at the time of application to which nationals are subject for the payment of old-age, invalidity and survivor's benefits abroad. The Committee requests the Government to provide information on the legislative measures adopted in this regard and on any developments concerning the conclusion of additional bilateral or multilateral agreements for the maintenance of social security rights and payment of benefits abroad, notably with the European Union. Lastly, the Committee requests the Government to provide statistical information concerning the transfer of social security benefits abroad for the branches of the Convention accepted by Tunisia.***

# United Kingdom of Great Britain and Northern Ireland

## Gibraltar

## Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

*Article 7 of the Convention. Additional compensation for persons in need of constant help.* In its previous comments, the Committee noted that, according to section 16 of the Social Security (Employment Injuries Insurance) Act No. 10 of 1952, the disablement pension to which victims of employment injury are entitled can be increased for those who needed constant attendance, but only for persons with an assessed disability of 100 per cent. On this basis, the Committee requested the Government to provide information on any form of supplementary assistance available to those with a permanent disability of less than 100 per cent who require the constant help of another person. The Committee notes the reply provided by the Government in its report. according to which the above-mentioned provision of the national legislation does not contravene *Article 7* of the Convention. ***The Committee recalls that Article 7 of the Convention requires that all injured persons whose incapacity is of such nature that they need the constant help of another person be provided with additional compensation, irrespective of their degree of disability, and not only those with an assessed degree of disability of 100 per cent. The Committee requests the Government to provide information on any measure ensuring that victims of employment injury with a disability of less than 100 per cent are provided with or compensated for the constant help of another person when they so require.***

*Article 9. Pharmaceutical aid.* The Committee notes the information provided by the Government in reply to its previous request concerning the provision of pharmaceutical aid free of charge to victims of industrial accidents who are not hospitalized.

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that Member States for which Convention No. 17 is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting its Part VI (see GB.328/LILS/2/1). Conventions Nos 121 and 102 reflect the more modern approach to employment injury benefits. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group and to consider ratifying Conventions Nos 121 or 102 (Part VI) as the most up-to-date instruments in this subject area.***

## Isle of Man

## Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

*Articles 9 and 10 of the Convention. Cost-sharing with respect to medicines and appliances.* The Committee takes due note of the information provided by the Government in reply to its previous request concerning the exceptions to cost-sharing with respect to medicines and appliances, and in particular the "wide range of exemptions from prescription charges targeting those who are most in need and those who have the least means to pay", as well the financial contribution required from other persons for entitlement to prescription medicines and appliances free of charge.

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM tripartite working group), the Governing Body has decided that member States for which Convention No. 17 is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or to accept Part VI of the Social Security (Minimum Standards) Convention, 1952 (No. 102) (see GB.328/LILS/2/1). Conventions

Nos 121 and 102 reflect the more modern approach to employment injury benefits. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group and to consider ratifying Convention No 121 or accepting Part VI of Convention No. 102 as the most up-to-date instruments in this subject area.***

## Bolivarian Republic of Venezuela

### Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1982)

### Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1982)

### Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1983)

### Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1982)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on social security, the Committee considers it appropriate to examine Conventions Nos 102 (minimum standards), 121 (employment injury benefits), 128 (invalidity, old-age and survivors' benefits) and 130 (medical care and sickness benefits) together.

The Committee notes the observations of the Independent Trade Union Alliance Confederation of Workers (ASI) on the application of Conventions Nos 102 and 130, received on 30 September 2020.

The Committee ***deeply regrets*** that the Government has not provided a detailed reply to the observations made by the ASI in 2011 and 2016 on the application of the Conventions. The Committee recalls that the ASI alleged: (1) that the legislation envisaged by the Basic Act on the Social Security System of 2002 (LOSSS), as partially reformed in 2012, generates legal inconsistencies due to the lack of clarity and of political will to implement the benefits system envisaged by the Act, resulting in an incomplete, uncoordinated and unequal system; and (2) the existence of procedural difficulties encountered by users of the social security system in asserting their rights before the courts, and particularly the Supreme Court of Justice (TSJ), which has provided contradictory indications concerning the development that should characterize the implementation of the fundamental right to social security, especially through procedural delays and reversals of case law. ***The Committee urges the Government to provide a detailed reply on this matter and emphasizes the importance of dialogue with the social partners on decisions relating to social security. The Committee also draws the Government's attention to the new issues raised by the ASI in its 2020 observations (see Article 10 of Convention No. 102, Article 10 of Convention No. 121, Article 13 of Convention No. 130 and Articles 71(3) and 72(2) of Convention No. 102) and requests the Government to provide its comments in this regard.***

*Part II (Medical care), Article 10 of Convention No. 102, Article 10 of Convention No. 121 and Article 13 of Convention No. 130. Medical care benefits.* With reference to its previous comments, the Committee notes the information provided by the Government on the network of health services at the various levels, and the number of medical treatment provided during the years 2016–18. The Committee also notes the ASI's observations alleging that the current crisis in the country has resulted, among other consequences, in the exhaustion of medicines and basic products for the prevention and treatment of diseases, and lack of care for people with chronic conditions, nutrition problems, pregnant women and newborns, as well as the inadequate management of the COVID-19 pandemic. ***The Committee requests the Government to provide its comments in this regard and to indicate the manner in which it is ensured that medical care is accessible, under reasonable conditions, to all persons protected, as envisaged by Article 13 of Convention No. 130. With reference to Convention No. 121, the Committee once again requests the Government to provide information on the measures adopted or envisaged to explicitly provide in the relevant legislation for at least the medical care benefits enumerated in Article 10 of the Convention.***

*Article 16(1) of Convention No. 130. Provision of medical care throughout the contingency.* The Committee notes the Government's reply to its previous request concerning the duration of medical care for insured persons and their spouses and children, taking into account the limitation of 52 weeks set out in section 128 of the General Regulations of the Social Insurance Act. More specifically, the Committee notes the Government's indication that, once this period has elapsed, the insured worker has to be reassessed to determine the state of incapacity, with a view to determining whether the temporary incapacity persists, whether it has ended, or whether it has become permanent, and that at all times the care and the worker's income are maintained, in accordance with section 10 of the Social Insurance Act and section 128 of the General Regulations of the Social Insurance Act. The Committee also observes that, according to the information available on the website of the Venezuelan Social Insurance Institute (IVSS)

referring to this legislation, in cases where the insured person in receipt of medical care for a long illness exhausts entitlement to medical care that person shall continue to receive such care on condition that there is a favourable medical opinion for that person's recuperation. ***Recalling that Article 16(1) of the Convention requires the medical care, as specified in Article 10, to be provided also to the spouses and children of persons protected throughout the contingency, the Committee requests the Government to indicate the provisions of the national legislation which guarantee that all the children and spouses of insured workers shall receive the medical care required by the Convention for as long as necessary.***

*Articles 10 and 19, in conjunction with Article 5, and Articles 13 and 16(2) and (3) of Convention No. 130. Protected persons and legislation respecting medical care.* The Committee notes the information provided by the Government in reply to its previous comments concerning *Articles 10* and *19 of Convention No. 130,* in conjunction with *Article 5*, on the protection of the spouses of salaried employees and their dependants, or 75 per cent of the economically active population and their dependants. The Committee also notes the information provided by the Government in reply to its previous requests concerning *Articles 13* and *16(2)* and *(3)* of the Convention on the need to provide copies of the laws and regulations specifying the medical care provided to persons protected, and regulating the practice of the continued provision of medical care in cases of sickness when the beneficiary is no longer in the category of persons protected.

*Article 22, in conjunction with Article 1(h) of Convention No. 130, Articles 13, 14(2) and 18(1), in conjunction with Article 19 of Convention No. 121, and Articles 10, 17 and 23, in conjunction with Article 26 of Convention No. 128. Level of cash benefits.* The Committee takes due note of the information provided by the Government on the level of cash sickness benefits (Convention No. 130) and employment injury benefits (Convention No. 121). ***With reference to the invalidity, old-age and survivors' benefits envisaged in Convention No. 128, the Committee notes the information provided and requests the Government to provide information on the application of Articles 10, 17 and 23, in conjunction with Article 26, on the level of invalidity, old-age and survivors' benefits for a standard beneficiary as determined by the Convention.***

*Articles 4, 7, 8 and 18, in conjunction with Article 1(e)(i) of Convention No. 121.* The Committee notes the information provided by the Government in reply to its previous requests concerning *Article 4* (coverage), *Article 7* (conditions under which a commuting accident is considered to be an industrial accident), *Article 8* (list of occupational diseases) and *Article 18*, in conjunction with *Article 1(e)(i)* (age of dependent children) of Convention No. 121.

*Article 21 of Convention No. 121 and Article 29 of Convention No. 128. Review of the rates of cash benefits. Statistical data.* In its previous comments, the Committee drew the Government's attention to the need to provide the statistical data required by the report form to be able to assess the real impact of the readjustment of pensions and other long-term cash benefits, taking into account changes in the general level of earnings or fluctuations in the cost of living. ***The Committee once again requests the Government to provide the specific statistical data necessary to assess the application of Article 21 of Convention No. 121 and Article 29 of Convention No. 128.***

*Article 22(1)(d)(e) and (2) of Convention No. 121 and Article 32(1)(d)(e) and (2) of Convention No. 128. Reasons for the suspension of benefits.* With reference to its previous comments on the need to amend section 160 of the General Regulations of the Social Insurance Act of 1989, as partially modified in 2012, under the terms of which the pension shall not be granted when the contingency (invalidity or partial incapacity) is due to a violation of the law or an offence against morals or decency, the Committee notes the Government's indication that it intends to refer the amendment indicated previously formally for assessment through the normal channels and corresponding bodies. The Committee notes that the Government makes the same reply in relation to the need to provide that, when benefits are suspended, a proportion shall be provided to the dependants of the beneficiary. ***The Committee requests the Government to indicate any measures adopted or envisaged to bring the national legislation into conformity with the provisions respecting the suspension of benefits contained in Article 22 of Convention No. 121 and Article 32 of Convention No. 128.***

*Article 21(1), in conjunction with Article 1(h)(i) of Convention No. 128. Age of children for entitlement to cash benefits in the event of the death of the breadwinner.* With regard to the need, as indicated in its previous comments, to amend section 33 of the Social Insurance Act to raise from 14 to 15 years the age up to which children shall be entitled to a survivors' pension, the Committee notes the Government's indication that the Committee's comments will be taken into account when the Social Insurance Act is updated. ***The Committee firmly hopes that the appropriate measures will be taken, without further delay, to bring the legislation into conformity with the requirements of Article 21(1) of Convention No. 128 and requests the Government to provide information on any measures adopted or envisaged in this regard.***

*Article 38(2) and (3) of Convention No. 128. Agricultural sector.* In its previous comments, the Committee requested the Government to report any increase in the number of employees in agriculture protected under the Convention. The Committee ***regrets*** to note that the Government has not provided this information and recalls that *Article 38(2)* of Convention No. 128 requires each Member which has made a declaration temporarily excluding from the application of the Convention employees in the agricultural

sector to indicate in its reports on the application of the Convention any progress which may have been made in this respect or, where there is no change to report, furnish all the appropriate explanations, and that paragraph 3 sets out the requirement to increase the number of employees protected in the agricultural sector to the extent and with the speed that circumstances permit. ***The Committee once again requests the Government to indicate any increase in the number of employees in the agricultural sector protected by the Convention.***

*Articles 71(3) and 72(2) of Convention No. 102. General responsibility of the State for the due provision of benefits and for the proper administration of social security institutions and services.* With reference to its previous comments on the transition to a reformed social security system based on sound principles of good governance and social dialogue, the Committee notes the Government's indication concerning the holding in 2017 of a National Constituent Assembly, to which were invited all the sectors and social partners related to, affected or influenced by the legislative changes respecting each of the subjects covered. The Committee also notes the information provided by the Government on the difficulties encountered in maintaining the level of wages and the purchasing power of workers and their families, and the access of the population to essential goods and services during the current economic and social crisis aggravated by the economic and commercial blockade suffered by the country. The Committee further notes the allegations by the ASI in its observations that for the past four years the country has been beset by a large-scale and complex humanitarian emergency, which is compounded by the severe failings of the hospital and health system, giving rise to the need for international assistance and cooperation, as well as, among other matters, the abandonment of certain adult care centres, which became critical in 2019. The Committee also notes the ASI's allegations on problems relating to good practices in the transparency, control and monitoring of the management of certain cash benefits and social programmes. The ASI emphasizes the urgency of giving effect to the LOSSS, the implementation of which would lead to an improvement in the quality of life as a central priority of social policy. ***Taking into account the information provided by the Government on the difficulties that are being experienced, the Committee requests it to make every effort to guarantee the provision of medical care and cash benefits to persons protected in the current context, in accordance with the provisions of Article 71(3) of Convention No. 102. The Committee requests the Government to inform it of any measures adopted or envisaged in this regard. The Committee also requests the Government to provide its comments on the ASI's observations relating to the governance of social security institutions and services.***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 12** *(Dominica, Guinea-Bissau, Uganda);* **Convention No. 17** *(Djibouti, Guinea-Bissau, Kyrgyzstan, Uganda, United Kingdom of Great Britain and Northern Ireland: Jersey, United Republic of Tanzania);* **Convention No. 18** *(Armenia, Djibouti, Guinea-Bissau, Tunisia);* **Convention No. 19** *(Dominica, Fiji, Guinea-Bissau, Saint Lucia, Trinidad and Tobago, Uganda, United Republic of Tanzania);* **Convention No. 42** *(United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Guernsey);* **Convention No. 102** *(Barbados, Chad, Dominican Republic, Saint Vincent and the Grenadines, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Isle of Man, Uruguay);* **Convention No. 118** *(Guinea, Uruguay);* **Convention No. 121** *(Uruguay);* **Convention No. 128** *(Barbados, Belgium);* **Convention No. 157** *(Kyrgyzstan).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 17** *(United Kingdom of Great Britain and Northern Ireland: Falkland Islands: Malvinas, Montserrat, and St Helena);* **Convention No. 19** *(United Kingdom of Great Britain and Northern Ireland: Guernsey);* **Convention No. 24** *(United Kingdom of Great Britain and Northern Ireland: Jersey);* **Convention No. 25** *(United Kingdom of Great Britain and Northern Ireland: Jersey);* **Convention No. 42** *(United Kingdom of Great Britain and Northern Ireland: Montserrat);* **Convention No. 118** *(Barbados).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 12** *(Malaysia: Peninsular Malaysia and Sarawak, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, Bermuda, British Virgin Islands, Falkland Island: Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat and St Helena)*; **Convention No. 14** *(United Kingdom of Great Britain and Northern Ireland: Anguilla)*; **Convention No. 17** *(Malaysia: Peninsular Malaysia, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, Bermuda, British Virgin Islands, Falkland Island: Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat and St Helena)*; **Convention No. 19** *(United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, Bermuda, British Virgin Islands, Falkland Island: Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat and St Helena, Uruguay and Zimbabwe)*;

**Convention No. 24** *(United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Guernsey, Isle of Man and Jersey)*; **Convention No. 25** *(United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Guernsey, Isle of Man and Jersey)*; **Convention No. 42** *(United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, Bermuda, Falkland Island: Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey and Montserrat)*; **Convention No. 71** *(France: French Polynesia and New Caledonia)*; **Convention No. 118** *(Uruguay)*; **Convention No. 121** *(Uruguay)*; **Convention No. 128** *(Uruguay)*; **Convention No. 130** *(Belgium, Uruguay)*.

# Maternity protection

## Equatorial Guinea

### Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1985)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

With reference to its comments on the application of *Article 6 of the Convention*, the Committee notes that, like Act No. 8/1992, sections 111 and 112 of Act No. 2/2005 of 9 May 2005 on public servants allow women workers to be dismissed for gross misconduct following the appropriate disciplinary procedure. In previous reports, the Government indicated its intention to amend the legislation so that any misconduct by pregnant workers would give rise to a disciplinary procedure at the end of the period of maternity or postnatal leave. ***The Committee hopes that the Government will take all the necessary measures to establish a formal prohibition on giving a public servant her notice of dismissal during her absence on maternity leave or at such time that the notice would expire during such absence.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 103** *(Tajikistan);* **Convention No. 183** *(Dominican Republic).*

## Supplementary information received in 2020 to the 2019 reports

The following Member State has provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comment issued in 2019: **Convention No. 103** *(Uruguay)*.

# Social policy

## Democratic Republic of the Congo

### Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* Since 2011, the Committee has been asking the Government to take all appropriate steps to ensure that provisions giving full effect to *Article 2* of the Convention are incorporated into the general administrative clauses of the specifications prescribed by section 49 of Act No. 10/010 concerning public contracts. The Government indicates that it undertakes to refer the issue to the National Labour Council. The Government also reproduces a list of laws and regulations whose purpose is to govern the organization and functioning of public contracts and procedures for the award, execution and monitoring of contracts by the State, the provinces and other public entities. In this regard, the Committee notes once again that the legislation governing public contracts does not contain any provisions for the inclusion of labour clauses in public contracts, as prescribed in *Article 2(1)* and *(2)* of the Convention. The Committee once again draws the Government's attention to the 2008 General Survey on labour clauses in public contracts and on the Practical Guide to Convention No. 94, drawn up by the Office in September 2008, which provides guidance and examples to follow to ensure that the national legislation is in conformity with the Convention. ***Noting that the Government has not sent any information on the measures taken or contemplated to give specific effect to the essential requirements of the Convention, namely the inclusion of labour clauses in public contracts as provided for in Article 2 of the Convention, the Committee urges the Government to take all the necessary steps to guarantee the full application of the Convention, and to keep the Office informed of any progress made in this matter, including as regards the referral of the issue to the competent authorities.***

***The Committee reminds the Government that it may avail itself of technical assistance from the Office in this regard.***

## Dominica

### Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 6 of the Convention. Legislation giving effect to the Convention.* The Committee notes that the Government has never supplied any information of a practical nature concerning the application of the Convention. ***It would therefore be grateful if the Government would collect and transmit together with its next report up-to-date information on the average number of public contracts granted annually and the approximate number of workers engaged in their execution, extracts from inspection reports showing cases where payments have been retained, contracts have been cancelled or contractors have been excluded from public tendering for breach of the Fair Wages Rules, as well as any other particulars which would enable the Committee to have a clear understanding of the manner in which the Convention is applied in practice.***

Moreover, the Committee understands that the Government has entered into a World Bank-financed technical assistance project for growth and social protection with a view to improving, among other things, the transparent operation and the efficient management of public procurement. ***In this connection, the Committee would appreciate receiving additional information on the implementation of this project and the results obtained, in particular as regards any amendments introduced or envisaged to public procurement laws and regulations which might affect the application of the Convention.***

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

## Jamaica

### Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)

*Article 2 of the Convention. Insertion of labour clauses in public contracts. Application of the Convention. Part V of the report form.* The Committee refers to its observations since 2009, recalling that it has been commenting for a number of years on the absence of any laws, regulations or practices giving effect to the provisions of the Convention. In its previous comments, initially made in 2014, the Committee expressed the hope that the Government would take prompt action to ensure the effective implementation of the Convention both in law and in practice. The Committee notes the Government's

response, indicating that there is at present no general law or regime in place that mandates particular labour clauses to be included in public contracts, as defined by the Convention. With respect to the application of *Article 2* of the Convention, the Government reports that there is currently no policy or practice of including clauses in public contracts which guarantee basic protections such as wages (including allowances), hours of work and other conditions of labour, which are not less favourable than those established. The Committee notes the Government's indication that it is presently making legislative changes to insert labour clauses in public contracts. In this respect, the Committee notes from the material available on the Jamaican Ministry of Finance and Public Service website that the Public Procurement Act of 2015, the Public Procurement Regulation of 2018 and the Revised Handbook of Public Sector Procurement Procedures (March 2014) contain no reference to labour clauses and do not require the insertion of any clauses of the type prescribed by *Article 2(1)* in the public contracts to which the Convention applies. Once again, the Committee draws the Government's attention to its 2008 General Survey on labour clauses in public contracts, paragraph 45, which makes clear that "the mere fact of the national legislation being applicable to all workers does not release the State which has ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in Article 2 of the Convention". As the Committee observed in the 2008 General Survey, "the Convention has a very simple structure, all its provisions being articulated around and directly linked to the core requirement of Article 2(1), i.e. the insertion of labour clauses ensuring favourable wages and other working conditions to the workers concerned. As a result, in case the national legislation makes no provision for the specific type of labour clause and in the specific terms set out in Article 2(1) of the Convention, the application of the remaining Articles 3, 4 and 5 becomes without object" (2008 General Survey, paragraph 176). The Committee observes that the labour clauses required by the Convention – which should be established by the competent authority in consultation with the social partners – are clauses of a very specific content (2008 General Survey, paragraph 46). The required clauses must ensure to the workers employed under public contracts, as these are defined under *Article 1(a)* through *(d)* of the Convention, the payment of wages (including allowances), hours of work and other conditions of labour that are not less favourable than those established for work of the same character in the trade or industry concerned [and which apply] in the district where the work is being performed (*Article 2(1)* of the Convention). ***Noting once again that it has been commenting for several years on the Government's failure to give effect to the Convention, the Committee recalls that the inclusion of appropriate labour clauses in all public contracts covered by the Convention does not necessarily require the enactment of new legislation, but can also be realized by administrative instructions or circulars, the Committee expects that the Government will take all necessary measures without further delay to bring its national legislation into full conformity with the core requirements of the Convention. The Committee requests the Government to keep the Office informed of progress made and recalls that the Government can avail itself of the technical assistance of the ILO in this regard, should it wish to do so.***

## Mauritius

### Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1969)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee examines the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Article 1(3) of the Convention. Scope of application. Subcontractors.* In its previous comments, the Committee noted that the provisions of section 46(5) of the Public Procurement Act, 2006, on the insertion of labour clauses, do not apply to subcontractors or assignees. Instead, it was left to the main contractor to ensure compliance and to submit evidence of this to the public procurement authority. Section 46(8) of the 2006 Act does not, however, place any legal responsibility on the main contractor to ensure compliance on the part of a subcontractor or to produce evidence of such compliance. Therefore, in its 2017 direct request, the Committee once again drew the Government's attention to the 2008 General Survey on labour clauses in public contracts, paragraphs 75–81, particularly paragraph 75, which points out that *Article 1(3)* of the Convention requires the competent authorities to take appropriate measures to ensure that labour clauses of the type required by the Convention are applied to work carried out by subcontractors or assignees of contracts. The Committee therefore once again requested that the Government take, without further delay, all necessary measures to ensure that labour clauses in public contracts apply fully to work carried out by subcontractors and assignees. The Committee notes that the Government refers in its supplementary report to the adoption of the Workers' Rights Act, Act No. 20 of 2019 (WRA), which repealed and replaced the Employment Rights Act 2008 (ERiA) as of 24 October 2019. The Committee notes with ***interest*** that section 29(1) of the WRA establishes the joint liability of the job contractor and the employer (principal) with regard to payment of the remuneration of the worker and the conditions of employment of the worker, including his or her safety, health and welfare. Furthermore,

section 29(3) of the WRA provides that "no person who is jointly liable with a job contractor under subsection (1) may set up as a defence to a claim from a worker seeking to recover remuneration the fact that he has already paid to the job contractor any sum due under the arrangement with the job contractor." In addition, section 29(4) of the WRA provides that "every worker employed by a job contractor shall, for securing payment of his remuneration, have the same privileges, in respect of the property of the principal, as he would have had if he had been directly employed by the principal without the intervention of the job contractor."

The Committee notes the Government's indication in its 2019 report that the standard bidding document for "security services, cleaning services and those for street cleaning, refuse collection and disposal services" includes provisions that govern subcontracting. The Government adds that any subcontracting component proposed by the main contractor is subject to the employer's (the public authority's) approval. Therefore, the conditions governing the subcontractor with respect to labour clauses will be the same as those governing the main contractor. Notwithstanding the Government's indication, the Committee observes that the standard bidding document (SCS/RFQ-GCC18/10-13) (as revised on 18 October 2013) does not contain any clauses providing for the contractor's responsibility to ensure observance of the terms of the labour clauses by a subcontractor. ***The Committee requests the Government to provide detailed information on the manner in which section 29 of the Workers' Rights Act, Act No. 20 of 2019 (WRA) is applied in practice to public employment contracts, as well as to provide the Office with copies of standard bidding documents currently in use.***

*Article 2. Insertion of labour clauses.* In its previous comments, the Committee noted the Government's indication that the standard bidding documents for the procurement of goods were based on World Bank guidelines which did not contain the type of labour clauses required by the Convention. In this regard, the Committee urged the Government to take measures to ensure full implementation with the requirements of the Convention. The Government indicates that the standard bidding documents for procurement of goods do not contain labour clauses of the type required by the Convention, as the goods in question are imported and are not manufactured locally. Hence, the workers involved in the manufacturing process of these goods are outside of Mauritius and its jurisdiction. The Government adds that these workers are instead covered by legislation applicable in their home country. While the Committee notes the Government's explanation, it wishes to stress that the Convention applies to all public contracts, whether for works (for example construction of a new highway, extension of an airport terminal), goods (for example the purchase of new uniforms for customs officers or procurement of computer hardware for a ministry) or services (for example cleaning or IT services). In this respect, the Committee draws the Government's attention to the ILO's 2008 Practical Guide on Convention No. 94 and Recommendation No. 84, which provides guidance in relation to the requirements of the Convention, with the aim of ultimately improving their application in law and practice (page 7). For instance, with regard to the application of the Convention to cross-border public procurement contracts, the Practical Guide points out that, while work done outside the contracting State is not covered by the provisions of the Convention, this does not mean that all contracts with a transnational dimension are excluded from its scope. Therefore, in the case of public contracts involving the use of foreign workers brought into the country for purposes of the contract, the requirements of the Convention in relation to labour clauses would fully apply and the workers would enjoy the protection of the required clauses (pages 18 and 19). ***The Committee once again requests the Government to take the necessary measures to ensure that the scope of application of the Public Procurement Act, 2006, are amended to cover all types of public contracts envisaged by the Convention.***

*Article 5(1). Adequate sanctions.* In its previous comments, the Committee requested the Government to indicate the measures taken or contemplated to ensure the application of adequate penalties for failure to respect the provisions of labour clauses contained in public contracts. The Government refers to section 45(6) of the Public Procurement Act 2006, which establishes that "no contractor shall be entitled to any payment in respect of work performed in the execution of the procurement contract unless he has, together with his claim for payment, filed a certificate stating: (a) the rates of remuneration and hours of work of the various categories of workers employed in the execution of the contracts; (b) whether any remuneration payable in respect of work done is due; and (c) any other information that the public body administering the procurement contract may require to satisfy himself that this Act has been complied with." In addition, section 46(7) provides that, in the event that remuneration is still owed to a worker employed on a public contract, the public body administering the contract "may, unless the remuneration is paid sooner by the contractor, arrange for the payment of the remuneration out of the money payable under the procurement contract." ***The Committee requests the Government to provide detailed updated information on the manner in which section 46(7) of the Public Procurement Act of 2006 is given effect in practice, as well as the manner in which effect is given to Article 5(1) of the Convention more generally.***

*Application of the Convention in practice.* ***While noting that the Government does not provide information on the application of the Convention in practice, the Committee once again expresses the***

***hope that the Government will make every effort to compile and communicate detailed updated information, including statistical data disaggregated by age and sex, regarding the application of the provisions of the Convention in practice.***

## Netherlands

### Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1952)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP), received on 29 October 2019. ***The Committee requests the Government to provide its comments in this respect.***

*Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts.* For a number of years, the Committee has been requesting the Government to provide information on progress made in ensuring effective application of the core requirements of the Convention. The Committee also requested the Government to provide updated information on the Code of Responsible Market Conduct (the Code) and its impact, as well as on the number and type of sanctions imposed by the sectoral committees authorised to examine complaints alleging inefficient or inadequate application of the Code. The Government indicates that the Code provides a set of principles that call for adequate working conditions, correct payment of wages and other conditions of work and employment. It adds that, while the Code is not legally binding, it makes a moral appeal to commissioning parties, contractors, hirers, trade unions, and intermediaries to describe, accept, and carry out assignments in a socially responsible manner. The Committee notes the Government's indication that the Code was signed by almost 1,500 parties in 2019. It further notes the information provided by the Government indicating that some 50 complaints are received annually and that such complaints can lead to sanctions. In their observations, the workers' organizations express their concern at the position of the Government that no further adjustments are necessary regarding the implementation of the Convention. They point out that the Netherlands has never specifically implemented the Convention, but that the Public Procurement Act of 2012, as amended in 2016, provides a general legal framework for public procurement that implements the European public procurement directives but does not give effect to *Article 2* of the Convention. The Committee further notes the observations made by the Dutch trade unions with regard to the provisions of section 2.115 of the Public Procurement Act, in which they express the view that this provision is purely permissive and does not ensure the application of Article of the Convention. The workers' organizations also refer in their observations to the *Wet Aanpak Schijnconstructies* (WAS) of July 2015, which introduces a civil-law "chain of liability" for payment of wages owed to workers engaged under public contracts. The Committee notes that neither the Dutch Public Procurement Act 2016 (as amended), nor the WAS contain any provisions giving effect to the Convention. In relation to the Code, the FNV, CNV and VNP indicate that the application of the Code is limited to its signatories, pointing out that the Code itself is a voluntary guide to prompt more responsible market behaviour, but which does not contain any legally binding provisions. The Dutch trade unions express their disagreement with the Dutch Government's reference to the Code as demonstrating the material implementation of Convention No. 94 in the Netherlands, observing that the Government's own institution, the Netherlands Authority for Consumers and Markets (ACM) takes the position that the inclusion of wage standards in the Code would infringe on (EU) competition law. The workers' organizations consider that, notwithstanding the importance of the Code, it is irrelevant to the issue of material implementation of the Convention, as it contains no provisions requiring implementation of *Article 2*. Therefore, the workers' organizations consider that, notwithstanding its repeated statements to the contrary, the Government of the Netherlands has no intention of complying fully with the requirements of Convention No. 94. While noting the importance of the Code of Responsible Market Conduct as a voluntary code of conduct, the Committee nevertheless wishes to draw the attention of the Government to its 2008 General Survey on labour clauses in public contracts (paragraph 128), in which the Committee stressed that the insertion of labour clauses in the specifications or general conditions of tender documents, even though it is a means of making persons tendering for contracts aware of the terms of such clauses in line with *Article 2(4)*, does not suffice to give effect to the basic requirement of the Convention set out in *Article 2(1)*, which requires that the labour clause be included as an integral part of the contract actually signed by the public authority and the selected contractor. ***Noting once again that it has been commenting for a number of years on the Government's failure to give effect to the Convention, the Committee trusts that the Government will take all necessary measures without further delay to bring its national legislation into full conformity with the core requirements of the Convention. In this***

***regard, it recalls that the inclusion of appropriate labour clauses in all public contracts covered by the Convention does not necessarily require the enactment of new legislation, but can also be realised by administrative instructions or circular.***

*Part V of the report form.* ***The Committee requests the Government to communicate concrete, up to date information on the practical application of the Convention in its next report. In particular, the Committee requests the Government to provide examples of public contracts issued during the reporting period containing labour clauses within the meaning of the Convention, as well as extracts of reports by the inspection services showing the number and nature of any violations and the sanctions imposed, information on the number of public contracts awarded during the reporting period, the approximate number of workers involved in their execution, and any other particulars bearing on the practical application of the Convention.***

# Nicaragua

## Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1981)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

***Follow-up to the Conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)***

The Committee notes the discussions in the Conference Committee on the Application of Standards, in June 2019, on the application of the Convention. The Conference Committee called on the Government to urgently: (i) ensure that labour market policies are carried out in consultation with the most representative, free and independent workers' and employers' organizations in order to help achieve the principles of the Convention, drawing on ILO technical assistance; (ii) ensure that migrant workers and their families are adequately protected against discrimination, and (iii) develop and implement sound and sustainable economic and labour market policies, in consultation with the most representative, free and independent workers' and employers' organizations. In this regard, the Conference Committee encouraged the Government to avail itself of ILO technical assistance and to provide further information on measures taken for consideration by the Committee of Experts at its next session.

*Parts I and II of the Convention. Improvement of standards of living.* In its previous comments, the Committee expressed deep concern at the serious situation in the country, stemming from the political and social crisis that began on 18 April 2018 and which had a serious impact on the population's living conditions. The Committee noted the information in the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) entitled, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", expressing concern about human rights violations and abuses in the context of the protests in Nicaragua. The Committee noted that since the beginning of the crisis, a great number of individuals had lost their jobs, the number of persons living below the poverty line had increased, pro-Government groups illegally occupied private land and the right to health had been significantly affected. In this regard, the Committee requested the Government to provide information on the results achieved by the National Human Development Plan (PNDH 2012–2016), the Country Partnership Framework for Nicaragua for 2018–2022, and on all measures aimed at improving standards of living of the Nicaraguan population, particularly with regard to groups in vulnerable situations, such as women, young people, people with disabilities, small-scale producers engaged in subsistence agriculture, and indigenous communities and communities of African descent. While noting that the damage caused to the population's living conditions was a consequence of the country's political and social crisis, the Committee requested the Government to take the necessary steps to ensure that those measures took account of workers' basic family needs. The Committee also requested the Government to supply information on all measures taken in that regard as well as their outcome. In that context, the Committee reminded the Government of the possibility of availing itself of ILO technical assistance.

The Committee notes the Government's indication that, as a result of the implementation of various programmes and social projects, significant progress has been made in increasing the population's well-being and reducing poverty and extreme poverty. However, the Government reports that in 2018, there was a 3.8 per cent contraction in a number of economic sectors as a result of conflict in the country over the past few months. The Committee also notes the information provided by the Government on programmes implemented for small producers and rural workers between 2014 and 2018. The Government refers, for example, to the implementation of the "Support Project for Adaptation to Change in Markets and the Effects of Climate Change", through which 14,273 coffee and cacao-producing families received training and technical support. Under the "Special Support Plan for Small-scale Producers", 205,979 producers benefited from the technical assistance and support were provided to men and women producers. The Government also indicates that, through collective bargaining, the minimum wage has been increased for 380,000 workers in the various economic sectors. With respect to access to healthcare for the Nicaraguan population in the country, the Government indicates that there are 1,520 health-care centres and 66 mobile clinics and that the number of health-care personnel increased from 5,556 to 6,318 doctors and 31,124 to 35,841 health workers. The Government adds that 752,052 workers are registered with the social security system. With regard to education, the Government refers to the development of the "2017-2021 Education Plan", the objective is to continue improving access to education (especially for members of the indigenous communities and those of African descent), as well as the quality of education and comprehensive training. Lastly, the Government reports the construction of 57,859 houses, with a view to ensuring the right to housing for 236,165 persons. The Committee notes, however, that the Government has still not provided information on the results achieved by the National Human Development Plan (PNDH 2012–2016) and the Country Partnership Framework for Nicaragua for 2018–2022. ***The Committee once again requests the Government to provide detailed information, including statistics disaggregated by sex***

***and age, on the results achieved by the Country Partnership Framework for Nicaragua for 2018-2022, as well as all measures aiming to ensure an improvement in the living standards of the Nicaraguan population (Article 2), particularly with regard to groups in vulnerable situations, such as women, young people, people with disabilities, small-scale producers engaged in subsistence agriculture, and indigenous communities and communities of African descent. The Committee requests the Government to continue providing information on the steps taken to ensure that such measures take account of workers' basic family needs, such as food and its nutritive value, housing, clothing, medical care and education (Article 5(2)). It also requests the Government to continue providing detailed information on all measures taken in this regard and their outcome.***

*Part III. Migrant workers.* In its previous comments, the Committee requested the Government to provide information on the measures taken to ensure that the working conditions of migrant workers who are required to live away from their homes take account of their family needs. It also requested the Government to provide statistical data on the number of migrant workers required to live away from their homes. The Committee notes that, according to the information supplied by the Directorate-General for Migration and Foreign Nationals, the number of Nicaraguan nationals who have emigrated abroad in search of work, as well as foreign workers who have arrived in the country looking for work, is on the increase. In 2014, 2,641 Nicaraguans emigrated, while in 2018 the number was 336,965. There were 5,194 immigrant workers in Nicaragua in 2014, compared with 183,275 in 2018. The Committee also notes the copy of the agreement concluded between Costa Rica and Nicaragua in December 2007, seeking to regulate binational labour migration management procedures for seasonal workers. The agreement provides that the Government of Costa Rica shall guarantee Nicaraguan workers the same labour rights, pay and entitlements as those legally available to national workers, as well as housing adapted to the safety and health requirements of national legislation. As part of that agreement, the Government refers to the "specific collective recommendation on agricultural workers, approved on 1 September 2017 by the Ministry of Labour and Social Security (MTSS) of Costa Rica, authorizing 750 foreign workers to work for a specified period planting and harvesting melons in Costa Rica. ***The Committee requests the Government to continue providing up-to-date statistical information, disaggregated by sex and age, on the number of migrant workers required to live away from their homes.***

*Article 13. Voluntary forms of thrift.* In its previous comments, the Committee requested the Government to provide information on the measures taken to encourage wage earners and independent producers to practise the voluntary forms of thrift envisaged by the Convention. The Committee also requested the Government to indicate the measures adopted to protect them against usury, particularly measures aimed at women. The Committee notes the Government's indication that 524 cooperatives are listed in the National Registry of Cooperatives of the Ministry of the Family, Community, Cooperative and Associative Economy (MEFCCA). The Government adds that those cooperatives offer financial intermediation, both thrift and credit, for their 123,862 associates, of whom almost half (52,588) are women. ***The Committee requests the Government to continue providing detailed up-to-date information on the measures taken to encourage wage earners and independent producers to practise the voluntary forms of thrift envisaged by the Convention. It also requests the Government to provide specific detailed information on the measures adopted to protect them against usury and, in particular, to specify the measures taken with a view to reducing loan interest rates by regulating loan transactions, and by increasing borrowing facilities for appropriate purposes through cooperative credit organizations or through institutions under the control of the competent authority. The Committee finally requests the Government to continue providing detailed information on the measures adopted in this regard that are intended specifically for women.***

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

# Norway

## Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1996)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Organisation of Employers (IOE) and the Confederation of Norwegian Enterprise (NHO), jointly submitted in October 2020. It further notes the additional observations of the Confederation of Norwegian Enterprise (NHO) and the observations of the Norwegian Confederation of Trade Unions (LO), both communicated together with the Government's report. ***The Government is requested to provide its comments in this respect.***

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* In its previous comments, the Committee requested the Government to provide updated detailed information on the manner in which Regulation No. 112/2008, as amended, is applied in practice, and to communicate a summary of the evaluation concerning the Regulation. The Government refers once again to the evaluation of the Regulation carried out by the Office of the Auditor General of Norway and that the results of the evaluation were published in an official report in 2016. The 2016 report found that public authorities do not always have adequate procedures and systems in place to prevent social dumping in their procurement processes. In this context, the 2016 report noted a clear correlation between the development of such procedures and systems and compliance with the Regulation. The Government reiterates that, while in some 86 per cent of procurements, public authorities include information indicating that the contract would contain a labour clause, compliance is generally higher among central authorities in comparison to

smaller municipalities. The Government indicates that, according to the 2016 report, lack of understanding of the requirements of the Regulation seems to be an important reason for inadequate compliance, and there is potential for improving the information and guidance on how to apply the Regulation. The Committee notes that, following the advice of the Office of the Auditor General, the Government has taken a number of measures to ensure a work-life without social dumping in public procurement. The Committee further notes that, in September 2018, the Government developed and published a new online guide on the Regulation on Pay and Working Conditions in Public Contracts. The Government reports that the Ministry of Labour and Social Affairs has requested the Agency for Public Management and eGovernment (Difi) to take measures to develop the online guide further, as well as to familiarise the public authorities with its contents. The Committee notes with ***interest*** that a similar guide has also been developed with respect to the public procurement legislation with the objective of limiting the number of subcontractors in the contract chain in sectors that are particularly vulnerable to social dumping. In their observations, the NHO and the IOE express their support of the Ministry of Labour and Social Affairs' initiative in tasking Difi with developing the online guide further to assist the public authorities in giving effect to the Convention. Nonetheless, they point out that any measures taken to disseminate information about the Regulation must ensure transparency and distinguish between best practices and applicable mandatory law. The Committee notes the Government's indication that it plans to evaluate compliance with the Regulation once the guide on the Regulation on Pay and Working Conditions in Public Contracts has been accessible online for some time. In addition, in its allocation letters to all governmental agencies for 2018 and 2019, the Government has urged that public procurements be carried out in such a way as to combat work-related crime. With respect to the LO observation on including pension schemes as a part of the employees' wage and working conditions, the NHO and the IOE concur with the Government's view that the Convention does not imply any obligations concerning occupational pension schemes. The Government indicates that it has appointed a committee of experts to examine several issues related to public procurement and public financing of welfare services. This committee will also look into questions related to pay and working conditions and pension schemes for employees employed by providers of welfare services. The Government reports that the Labour Inspection Authority's resources have been increased by 110 million Norwegian kroner from 2013 to 2019, including approximately 34 million kroner for combating work-related crime. The Government adds that several public authorities have developed their own models for public procurement that aim to promote decent work and fight work-related crime, social dumping and the exploitation of workers across supply chains. These models implement standard contract terms, including terms relating to labour rights that are stricter than those currently required by procurement regulations. The Committee notes that the Government has initiated the making of a guide for public authorities who want to use such stricter standards in their public contracts. In its observations, the Norwegian Confederation of Trade Unions (LO) indicates that the European Surveillance Authority (ESA) has sent a letter of formal notice to the Government concerning restrictions on subcontracting in the field of public procurement in Norway, in which it expresses the view that the relevant Norwegian public procurement law does not comply with EEA-law. ESA has also requested information concerning the municipal public procurement policies (models) used to combat work-related crime. The LO further observes that the Norwegian Government has rejected a proposal from the Labour Party to change the national public procurement law based on the new ruling of the EC-court (Case C-395/18- Tim SpA). The ruling stated that the requirement to ensure that providers comply with environmental, social and labour provisions in public procurement is a cardinal value equal to the other basic principles such as transparency, competition, predictability and non-discrimination. The Committee notes that the LO will continue to work to include the new ruling in national law. It also notes the observations of the IOE and the NHO, indicating that any measures taken to give effect to Convention No. 94 must be subject to an assessment of relevant EEA/EU Law on free movement and rules concerning public procurement. ***The Committee requests that the Government continue to provide information on the manner in which the Convention is applied, including, for instance, labour inspection reports, indicating the number of inspections of public administration contracts carried out, the number and type of violations detected and the sanctions imposed, if any. It further requests the Government to keep the Office informed of any developments in the relevant national legal and regulatory framework as well as with respect to evaluations of the Regulation on Pay and Working Conditions in Public Contracts.***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 82** *(New Zealand: Tokelau);* **Convention No. 94** *(Guyana, Malaysia: Sabah, Mauritania, Netherlands: Aruba and Sint Maarten, Nigeria, North Macedonia, Serbia, Sierra Leone, Singapore, Uganda);* **Convention No. 117** *(Ghana, Guinea, Madagascar, Republic of Moldova).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019:

**Convention No. 94**; *(Netherlands: Caribbean Part of the Netherlands)*; **Convention No. 117** *(Malta)*.

# Migrant workers

## Barbados

### Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1967)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Articles 7 and 9 of the Convention. Free services and assistance and transfer of remittances.* In its previous comments, the Committee considered that the requirement for migrant workers participating in the Canada–Caribbean Seasonal Agricultural Workers Programme "the Farm Labour Programme" – to remit 25 per cent of their earnings to the Government directly from Canada as mandatory savings, 5 per cent of which was retained to pay the administrative costs of the Programme, could be contrary to the spirit of *Article 9* of the Convention. The Committee had also taken note of the concerns expressed by the Congress of Trade Unions and Staff Associations of Barbados that this requirement, together with the immediate deduction of certain costs such as airfares, pension and medical contributions from the workers' pay, created hardship for the workers, and the Programme needed to be reviewed. The Committee also drew the Government's attention to the fact that charging workers for purely administrative costs of recruitment, introduction and placement is prohibited under the Convention (General Survey of 1999 on migrant workers, paragraph 170).

The Committee notes the Government's indication that arrangements are made for a percentage of the earnings of the workers on overseas programmes to be remitted back to the country for them to access upon return and that workers travelling on the overseas programmes are required to sign an "agreement" (contract of employment) which allows for the deduction of 20 per cent of their wages to cover administration costs and national insurance contributions. According to the Government, upon arrival in Canada the workers are met by the Barbados liaison officers and in Barbados the employment services to migrants are rendered free of charge by the National Employment Bureau, which oversees the preparation and departure of workers. The Committee notes that the "Agreement for the Employment in Canada of Commonwealth Caribbean Seasonal Agricultural Workers – 2013" provides that the worker agrees that the employer shall remit to the government agent 25 per cent of the worker's wages for each payroll period and that "a specified percentage of the 25 per cent remittance to the government agent shall be retained by the Government to defray administrative costs associated with the delivery of the programme" (section IV, paragraphs 1 and 3). The worker also agrees to pay to the employer part of the transportation costs and the employer, on behalf of the worker, will advance the work permit fees and be reimbursed by the government agent (section VII, paragraphs 3–4). ***The Committee requests the Government to clarify why it is considered necessary to require migrant workers under the Farm Labour Programme to remit 25 per cent of their wages to the liaison service for mandatory savings, including for administrative costs, and to indicate whether the liaison service has a role in the recruitment, introduction and placement of migrant workers and whether any of the administrative costs retained by the liaison service relate to recruitment, introduction or placement. The Committee also requests the Government to take the necessary measures to ensure that migrants for employment are permitted to transfer their earnings or such part of their earnings and savings as they desire, and to provide information on any steps taken, in cooperation with the workers' and employers' organizations, to review the impact of the Farm Labour Programme on the situation of Barbadian migrant workers.***

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

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

## Israel

### Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1953)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

*Article 6 of the Convention. Equality of treatment. Foreign live-in careaivers.* In its previous comments. the Committee recalled the decision of the High Court of Justice in *Yolanda Gloten v. the National Labour Court* (HCJ 1678/07) of 29 November 2009 confirming that live-in caregivers, both nationals and foreigners, are excluded from the applicability of the Hours of Work and Rest Law, 1951. It noted, in this regard that, the High Court also acknowledged the need for an appropriate and clear legislative framework guaranteeing adequate pay and favourable working conditions for this group of workers (mostly women). In addition, the Committee noted the Government's indication that it was working to adopt a gradual approach towards the implementation of recommendations made to the Ministry of Economy to improve the situation of foreign caregivers, which related, among others, to amendments of the legislation and a comprehensive wage. The Committee noted also that, although both nationals and foreigners caregivers are excluded from the Hours of Work and Rest Law, the great majority of female

Israeli care workers in the long-term caregiving sector are mostly employed in part-time jobs, while foreign caregivers are mostly live-in caregivers and therefore required to reside in the homes of their employers and prohibited from live-out arrangements or part-time employment. Therefore, it had requested the Government to ensure that the working conditions of foreign caregivers are in accordance with the provisions of *Article 6* of the Convention. In its report, the Government reiterates that the Hours of Work and Rest Law, 1951, does not apply to live-in caregivers, independently of the nationality of the workers. The Committee notes that the Government does not provide information concerning the progress achieved with regard to the gradual implementation of the recommendations made to the Ministry of Economy mentioned in its previous report. The Committee observes further that, in its 2019 concluding observations, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) noted that 58 per cent of migrant workers in Israel, most of them women, are employed as caregivers on a live-in basis and expressed concern over the fact that they are excluded from the applicability of the Hours of Work and Rest Law, 1951 and that their working conditions are not effectively monitored by the labour authorities. The CESCR also noted that while Israel has concluded bilateral agreements with some of the countries of origin of migrant workers to protect their rights, workers from countries that do not have a bilateral agreement with the State party may be at risk of exploitation and abuse (E/C.12/ISR/CO/4, 12 November 2019, paragraph 28). ***The Committee reiterates its request to the Government: (i) to pursue its efforts, in consultation with workers' and employers' organizations, to ensure that the proposed legislative framework guaranteeing adequate pay and favourable working conditions for caregivers is in accordance with the provisions of Article 6 of the Convention (such as for example concerning access to live-out arrangements or part-time employment); and (ii) to provide detailed information on the progress made and on any obstacles encountered in this regard. It also refers to its comments on the application of the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Please provide excerpts from bilateral agreements with countries of origin of migrant workers, particularly of the provisions concerning the protection of migrant workers in abusive situations.***

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

## Italy

### Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1981)

*Part I. Migration in abusive conditions. Articles 2–7 of the Convention. Multilateral and bilateral cooperation.* In its previous observation, the Committee noted the complex and global nature of the phenomenon of irregular migration as well as the efforts deployed by the Government to find solutions to address migration in abusive conditions, and requested it to continue to take all necessary measures to promote national (through cooperation with workers' and employers' organizations), bilateral, multilateral and regional cooperation to address the issue of irregular migration with full respect to migrant workers' human rights and to prosecute and punish those organizing and assisting in clandestine movements of migrants. The Committee also asked the Government to provide information on any developments in this regard as well as on all the measures adopted at national level to ensure respect, in law and in practice, of the human rights of all migrant workers. The Committee notes the information provided by the Government in its report about the Italian Agency for Development Cooperation (AICS) – established by Law No. 125 of 2014 – which is in charge of actions focused on migration and development, including research aimed at identifying the most suitable approaches to ensure safe, orderly and regular migration; and programmes and projects directed at ensuring a safe, orderly and regular migration. In this framework, in 2017, the AICS published a report on "Sustainable migration: Interventions in the country of origin" laying down a number of policy interventions to combat migration in abusive conditions, ranging from active labour policies, education, professional training and investments in the countries of origin, to "preparatory" programmes for migrants workers and policies for circular migration, among others. The Committee further notes the Government's indication that the work of AICS also involves organizations and associations of migrants in Italy. In addition, the Government informs that it has contributed to the design of the European Union's (EU) External Investment Plan (EIP) that provides the framework for investments in Africa and in the neighbouring countries of the EU with a view to promoting sustainable interventions to tackle some of the root causes of migration. Concerning international cooperation, the Committee also notes that the Government provides detailed information on the range of agreements signed, as of April 2017, to address the issue of irregular migration and regulate repatriation, including bilateral agreements with European and non-European countries, such as Algeria, Egypt and Nigeria, among others, and memoranda of understanding with several countries, encompassing, for example, Gambia, Ghana, Malta, Niger, Senegal, and Sudan. The Committee further notes from the website of the Government that in 2017 a Memorandum of Understanding was reached with the Government of Libya on "cooperation in the fields of development, the fight against illegal immigration, human trafficking and smuggling and on reinforcing the security of borders between the

State of Libya and the Italian Republic", which has been criticized by various actors for its impact on the human rights of migrants, including more recently by the Commissioner for Human Rights of the Council of Europe (CoE) who asked for the suspension of the cooperation activities in place with the Libyan Coast Guard that impact, directly or indirectly, on the return of persons intercepted at sea to Libya until clear guarantees of human rights compliance are in place (statement of 30 January 2020) and asked all CoE Member States to urgently review their cooperation activities (Recommendation on bridging the protection gap for refugees and migrants in the Mediterranean, June 2019).

As regards the measures adopted at national level to ensure respect of the human rights of all migrant workers, the Committee notes the information provided by the Government on a number of legislative measures adopted, including: the increase by 20 per cent of the sanctions against the employer of a migrant worker who lacks the permit of residence or whose permit is expired, introduced by Legislative Decree No. 151 of 2015 amending section 22 of Legislative Decree No. 286 of 1998 (Consolidated Immigration Law); and the measures directed at combating labour exploitation in agriculture, adopted with Law No. 199 of 2016. In this respect, the Committee notes, in particular, the protocols signed between various ministries and public authorities to tackle the illegal intermediation of labour and the exploitation of agricultural workers "caporalato" in collaboration with trade unions, civil society organizations and the organizations of agricultural businesses. On the other hand, the Committee notes that the Government provides information about the difficulties faced in combating the trafficking of migrants, especially when this happens via the sea, due to the strategies adopted by the responsible criminal organizations to elude the jurisdiction of destination countries. The Committee also notes the Government's indication that the difficulties have been exacerbated further in recent times because smugglers now select, from the trafficked persons, young persons who have fishing experience or can speak English and leave to them the conduct of the boats beyond the territorial waters of the country of origin.

***Acknowledging the efforts of the Government and emphasizing the continuing need for multilateral cooperation and cohesive action, particularly at European level, to address, in a comprehensive and effective manner, migration in abusive conditions, the Committee requests the Government to continue to take measures to promote cooperation at various levels to address irregular migration with full respect of migrant workers' human rights. The Committee also requests the Government to provide information in this respect, including on any progress made in overcoming the difficulties currently faced in counteracting the trafficking of migrants and prosecuting the authors. The Committee also asks the Government to provide information on the actions taken by the AICS to ensure safe, orderly and regular migration and to continue to supply information on the measures adopted at national level to ensure respect, in law and in practice, of the human rights of all migrant workers. It further encourages the Government to review its Memorandum of Understanding of 2017 with Libya with a view to ensuring respect for the human rights of all migrant workers.***

*Articles 1 and 9. Minimum standards of protection. Access to justice.* The Committee recalls that in its previous observation it underlined that access to justice, including adequate access to assistance and advice, is a basic human right which must be guaranteed to all migrant workers in law and in practice and highlighted the importance of providing for effective and speedy legal procedures. In this regard, the Committee requested the Government : (1) to indicate the specific scope of the term "particularly exploitative working conditions" provided for in article 1(1)(b) of Legislative Decree No. 109/2012 – which contemplates the issuance of a six-month residence permit on humanitarian grounds for those third country nationals who in cases of "particularly exploitative working conditions", lodge complaints or cooperate in criminal proceedings against employers, at the initiative or with the favourable opinion of the courts; (2) to provide information on how it is ensured in practice that all migrant workers in an irregular situation can seek redress from the courts with respect to violation of their rights arising out of past employment including non-payment or under-payment of wages, social security and other benefits; (3) to provide data disaggregated by sex and origin on the number of migrant workers in an irregular situation that have filed administrative or judicial claims with respect to violations of their basic human rights or rights arising out of past employment; (4) to provide information on the manner in which adequate legal defence for migrant workers in an irregular situation is ensured, including in detention centres; and (5) to continue to provide information on inspections carried out in the construction and agriculture as well as other sectors to detect illegal employment of migrants and the results achieved.

Concerning the specific scope of the term "particularly exploitative working conditions" provided for in article 1(1)(b) of Legislative Decree No. 109/2012, the Committee notes the Government's indication that Law No. 132 of 2018 abrogated the temporary residence permit on humanitarian grounds, which was provided for by Legislative Decree No. 109/2012. The Government however informs that section 22 of the Consolidated Immigration Law, as amended by Law No. 132 of 2018, still stipulates that the foreign worker who lodges a complaint against his or her employer alleging "particularly exploitative working conditions" and cooperates in the related criminal proceeding, can be issued a special residence permit of the duration of six months, subject to the favourable opinion of the Public Prosecutor. Pursuant to section

22(12)(6) of the Consolidated Immigration Law, such special permit allows the possibility of taking up a job and can be converted, after its expiry, into a residence permit allowing wage-employment or self-employment. Concerning the notion of "particularly exploitative working conditions", the Government refers to article 603bis of the Criminal Code, as amended by Law No. 199 of 2016, which defines the crime of illegal intermediation of labour and labour exploitation. The Committee notes that, according to this article, the existence of labour exploitation is presumed in presence of one of more of the following conditions: (1) reiterated payment of remunerations that do not correspond with what is established in the national or territorial collective agreements signed by the most representative workers' organizations at national level, or that is not proportionate to the quantity and quality of the work performed; (2) reiterated violation of the norms regulating working time, rest periods and annual holidays; (3) breach of the norms governing occupational safety and health; and (4) subjecting the worker to working conditions, surveillance methods and housing conditions that are degrading. As regards migrant workers' access to justice in practice, the Committee notes the Government's indication that migrant workers who allege the non-payment or under-payment of wages, social security and other benefits are entitled to seek redress from the courts under article 2126 of the Civil Code, which provides for the payment of remuneration for the period in which the work has been performed as well as the payment of social security contributions on the part of the employer. The Government indicates that the complaint can be filed either by the concerned migrant worker or by a trade union or other association and explains that migrant workers in irregular situation can also denounce the situation before labour inspectors and the local offices of the national social security service. Furthermore, the Government indicates that on 10 February 2017 the Ministry of Interior and the Ministry of Labour and Social Policies adopted a joint decree defining the terms and modalities to ensure that illegally employed migrant workers have access to information concerning their rights and how to claim them, before the execution of any expulsion order, in accordance with European Directive 2009/52/CE. Based on this decree, an "information note" has been developed, containing information about the rights to remuneration and social security benefits as well as on the different avenues to claim these rights. The Committee notes the Government's indication that this note is distributed to the workers by employers' and workers' organizations and by labour inspectors. The Committee also notes from the "information note" annexed to the Government's report that such note is to be signed by the worker, to whom one copy of the document is given, while another copy is sent to the Immigration Office in charge of repatriation procedures. The Committee, however, notes that there is no indication as to the languages in which this note is available. It also notes that the information note does not provide information on the possibility that migrant workers have of obtaining a special resident permit in case of "particularly exploitative working conditions" under article 22 of the Consolidated Immigration Law. As far as the results of labour inspections are concerned, the Committee notes the information provided by the Government based on the data gathered by the National Labour Inspectorate in 2016. The Committee notes that the labour inspectors found 1,357 non-EU migrant workers in irregular situations, particularly in the industry and manufacturing sectors followed by the tertiary sector. The Committee further notes from the 2018 report of the Labour Inspectorate, available on its website, the specific information concerning the detection of illegal intermediation of labour and labour exploitation of workers, including migrant workers. In particular, the Committee notes that, in 2018, 7,160 inspections were undertaken in the agriculture sector, which found irregular situations in more than 50 per cent of cases. Of the 5,114 workers in irregular situations identified, 65.5 per cent did not have a contract and of these 263 were non-EU migrant workers without a residence permit. The Committee notes that, in total, the labour inspectorate identified 478 migrant workers as victims of exploitation, of whom 350 were in the agriculture sector, and 157 migrant workers without residence permits were equally victims of exploitation (130 in agriculture). Finally, the Committee notes that, in its concluding observations of 2017, the United Nations Human Rights Committee expressed concern at the absence of clear and effective procedures allowing migrant workers to complain about abusive working conditions, including in relation to outstanding pay (CCPR/C/ITA/CO/6, 1 May 2017, paragraph 28(d)). ***In light of all the above, the Committee requests the Government : (i) to indicate how it is ensured in practice that all migrant workers in irregular situations have access to complete information about their labour rights and the means of redress available, with appropriate safeguards for confidentiality, including the possibility of obtaining a "special residence permit", in a language understandable to them, as well as to legal assistance, also in detention centres, including any measures adopted in this respect in collaboration with the social partners; (ii) to provide data disaggregated by sex and origin on the number of migrant workers in an irregular situation that have filed administrative or judicial claims with respect to violations of their basic human rights or rights arising out of past employment; (iii) to provide information on the number of complaints lodged by migrant workers alleging "particularly exploitative working conditions" (such as for example non-payment or under-payment of wages, social security and other benefits) brought to the attention of the labour inspectors and the results thereof (violations found, penalties imposed, repayment amounts ordered); and (iv) to provide information on the number of special permits granted under section 22(12)(6) of the Consolidated Immigration Law.***

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

# Malaysia

## Sabah

### Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1964)

*Article 6(1)(a) of the Convention. No less favourable treatment. Foreign worker levy.* In its previous comments, the Committee had noted that in several sectors, an annual foreign worker levy was to be paid to the Immigration Department and that there was an ambiguity as to whether this levy could be deducted from the workers' wage. The Committee notes that in its report, the Government indicates that: (1) on 1 January 2018, a policy was introduced to give effect to the Government's intention that all levies imposed on the hiring of foreign workers shall be borne by employers; and (2) a Steering Committee on the Multi-tier Levy was established to examine the impact of the levy system. ***Recalling that the deduction of levies from the wages of foreign workers may result in unfavourable treatment of these workers as compared to nationals, contrary to Article 6(1)(a) of the Convention, the Committee asks the Government to indicate what is: (i) the current legal situation in light of the new policy introduced in 2018 and the expected results from these changes (ii) the exact role of the newly established Steering Committee on the Multi-tier Levy and how it relates to this intention; and (iii) the outcome of the examination conducted by the Steering Committee on the deduction of the levies.***

*Article 6(1)(b). No less favourable treatment. Social security benefits.* In its previous comments, the Committee urged the Government to adopt measures to end the differences in treatment between nationals and foreign workers with respect to the payment of social security benefits, and in particular with regard to compensations in cases of industrial injuries. In this regard, the Committee notes the conclusions adopted in 2018 by the Committee on the Application of Standards (CAS) of the International Labour Conference on the application of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), by Malaysia Peninsula and Sarawak. The Committee notes with ***satisfaction*** the information provided by the Government that foreign workers are now covered under the Employees' Social Security Act.

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 97** *(Barbados, Belize, Dominica, Grenada, Guatemala, Guyana, Israel, Italy, Kenya, Kyrgyzstan, Malawi, Malaysia: Sabah, Tajikistan);* **Convention No. 143** *(Guinea, Italy, Kenya, Uganda).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 97** *(Malaysia)*.

# Seafarers

## General observation

### Maritime Labour Convention, 2006, as amended (MLC, 2006)

The Committee notes with ***deep concern*** the challenges and the impact that restrictions and other measures adopted by governments around the world to contain the spread of the COVID-19 pandemic has had on the protection of seafarers' rights as laid out in the Convention. [1]

The Committee takes note of the observations of the International Transport Workers' Federation (ITF) and of the International Chamber of Shipping (ICS), received by the Office on 1 October 2020 and 26 October 2020, respectively, indicating that all ratifying States have failed to comply with major provisions of the Convention during the COVID-19 pandemic, notably regarding cooperation among Members, access to medical care and repatriation of seafarers. They note that, in addition to the humanitarian concerns linked to the violations of seafarers' rights, there is now a risk that fatigue and other health issues could lead to serious maritime accidents. The Committee further notes the replies to these observations received from the Governments of Barbados, Cyprus, France, Honduras, Hungary, India, Ireland, Republic of Korea, Lithuania, Myanmar, Palau, Poland, Senegal, Singapore and United Kingdom of Great Britain and Northern Ireland, which acknowledge the existence of numerous challenges and highlight the different measures taken to ensure, as far as possible, the protection of seafarers' rights. Several other Governments have provided information to the Office concerning the measures adopted in relation to the implementation of the Convention during the pandemic (Australia, Belgium, Canada, Croatia, Denmark, Germany, Greece, Ireland, Japan, Malaysia, Panama, Slovenia and Spain). The Office has also received information about hundreds of individual seafarers' complaints which have been sent directly by the seafarers concerned or transmitted by the Seafarer Crisis Action Team set up by the Secretary-General of the International Maritime Organization (IMO). [2]

In particular, the Committee notes that according to the information provided by the ITF and the ICS, hundreds of thousands of seafarers (approximately 400,000 for the ITF) are currently stranded on board and a similar number is waiting at home unable to replace them and earn their living. This situation has unfolded into a humanitarian crisis. This is so, in spite of an unprecedented level of social dialogue among the key actors of the maritime sector at the international level and the high level of cooperation among them, numerous governments and United Nations agencies, under the leadership of the ILO and IMO.

The Committee notes with ***deep concern*** that, while ports around the world have continued to operate uninterruptedly during the pandemic, seafarers – who provide a key frontline service to society, with more than 90 per cent of world trade moved by sea, including food, medicines and vital medical supplies – continue to face extreme difficulties to disembark and transit through countries for the purpose of repatriation. Both the ITF and the ICS indicate that they have received thousands of individual claims from seafarers around the world describing desperate situations of violations of the provisions of the MLC, 2006. Seafarers are requested to continue working beyond the terms agreed in their seafarers' employment agreements (SEAs), they are denied access to medical care ashore *(Regulation 4.1)* and are deprived from their rights to repatriation *(Regulation 2.5)*, annual leave and shore leave *(Regulation 2.4)* in a number of cases. It is recalled that most ships do not have medically trained staff on board and as consequence when access to medical care ashore is denied, seafarers have no medical care whatsoever.

The Committee notes the ITF indication that the notion of *force majeure* is being used by ratifying Members as a shield for non-compliance with the Convention. The MLC, 2006, is a comprehensive labour instrument for the maritime industry applicable to all ratifying countries, and not a compilation of labour regulations to be applied selectively, if and to the extent that circumstances so permit. At the beginning of the pandemic, ratifying States, in their different capacities as flag States, port States or labour-supplying States might have been confronted with genuine situations of *force majeure*, which rendered materially impossible the compliance with some of their obligations under the MLC, 2006. The Committee is bound to note, however, that more than ten months have elapsed since then, which constitutes realistically sufficient time frame allowing for new modalities to be explored and applied, in conformity with international labour standards. *Force majeure* may be invoked as a condition precluding wrongfulness for non-observance of a treaty obligation only in the case of unforeseen and unforeseeable event(s) creating

[1] The Committee notes the Information note on maritime labour issues and coronavirus (COVID-19) developed by the Office to provide a rapid response to questions regarding the implementation of the Convention as well the New Statement of the Officers of the Special Tripartite Committee of the MLC, 2006 on COVID-19.

[2] The Seafarer Crisis Action Team was set up in April 2020 in order to, inter alia, monitor developments, coordinate efforts, communicate with all relevant stakeholders and provide targeted support in seafarers' individual cases and particularly urgent situations regarding crew changes, repatriation, access to medical care and/or abandonment.

an absolute and material impossibility of compliance with that obligation. In contrast, circumstances rendering observance of an international obligation more difficult or burdensome do not constitute a case of *force majeure*. ***The Committee stresses that the notion of force majeure may no longer be invoked from the moment that options are available to comply with the provisions of the MLC, 2006, although more difficult or cumbersome, and urges ratifying States which have not yet done so, to adopt all necessary measures without delay to restore the protection of seafarers' rights and comply to the fullest extent with their obligations under the MLC, 2006.***

The Committee welcomes the resolutions recently adopted by the United Nations General Assembly, [3] the ILO Governing Body [4] and the IMO Maritime Safety Committee, [5] urging Member States to designate seafarers as key workers for the purpose of facilitation of safe an unhindered movement for embarking or disembarking a vessel, the facilitation of shore leave, and, when necessary, to shore-based medical treatment. The Committee observes that as result of the primarily international character of the maritime sector, it is not possible to comply with a number of obligations under the MLC, 2006, without allowing the movement of seafarers across borders in appropriate conditions. ***The Committee therefore strongly encourages ratifying States in their different capacities as flag States, port States or labour-supplying States who have not yet done so, to recognize seafarers as key workers without delay and to draw in practice the consequences of such qualification, in order to restore the respect of their rights as provided for in the MLC, 2006.***

All governments are confronted with the need to strike an adequate balance between the protection of public health on the one hand, and the respect of the rights and dignity of seafarers on the other. The Committee notes in this regard the *Recommended framework of protocols for ensuring safe ship crew changes and travel during the coronavirus (COVID-19) pandemic*, which was proposed by a broad cross section of global industry associations representing the maritime transportation sector and which enjoy consultative status at the IMO (MSC.1/Circ. 1636). The United Nations General Assembly as well as the ILO and the IMO in the above-mentioned resolutions refer to the implementation of the *Recommended framework of protocols* as an appropriate guidance to ensure safe crew change and travel of seafarers. ***The Committee hopes that governments will refer to such guidance when adopting the measures urgently needed to restore compliance with their obligations under the MLC, 2006.***

The ITF and the ICS, in their observations, allege that ratifying States have failed to comply with their obligation under *Article I* of the MLC, 2006, according to which Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of the Convention. The Committee acknowledges that numerous governments have undertaken important actions at bilateral, regional and international levels to identify solutions and generate initiatives to overcome the challenges faced by seafarers and shipowners as a result of the pandemic. The Committee observes, however, that based on the information provided by the ITF and ICS and the evidence available at the Office, the provisions of the Convention continue to be disregarded worldwide. Indeed, hundreds of thousands of seafarers around the world are still on board well beyond the original expiry date of their SEAs and in numerous cases well beyond the default 11 months maximum period of service on board derived from the provisions of the Convention, with reported phenomena of physical and mental exhaustion, anxiety, sickness and even suicides; thousands of seafarers have been disembarked but are not allowed to go back to their countries of origin and find themselves stranded in a foreign country; moreover, hundreds of seafarers have been denied medical care ashore which has resulted in death of seafarers in several cases. In numerous cases, port restrictions are repeatedly introduced with short-term announcements hindering the reasonable planning of the ships' route while the non-coordinated implementation and enforcement of the MLC, 2006, increases the risk of travel prohibition for both ship and crew and, in some cases, leads to the detention of ships due to State failures. The Committee considers that these elements constitute sufficient basis to conclude that Members, as a whole, have failed to comply with *Article I, paragraph 2* of the MLC, 2006. The Convention does not contain any provisions allowing for the temporary suspension of the implementation of its provisions, in case of crisis, health related or otherwise. To the contrary, the Committee is of the view that it is precisely at times of crisis that the protective coverage of the MLC, 2006, assumes its full significance and needs to be most scrupulously applied. This is even more so as the Convention contains only minimum standards for the protection of seafarers' rights. ***The Committee accordingly urges Governments to adopt the necessary measures, in consultation with relevant seafarers' and shipowners' organizations, to further enhance cooperation with each other to ensure the***

[3] UN General Assembly, resolution 75/17, International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains, A/RES/75/17 (2020).

[4] ILO, Governing Body Resolution concerning maritime labour issues and the COVID-19 pandemic.

[5] IMO Maritime Safety Committee, Resolution MSC.473(ES.2) – Recommended action to facilitate ship crew change, access to medical care and seafarer travel during the COVID-19 pandemic, MSC.7/Circ.1/Rev.7 (2020).

***effective implementation and enforcement of the Convention, a fortiori during the COVID-19 pandemic, where it is mostly needed***.

The Committee notes the ITF's indication that the failure to arrange the repatriation of seafarers at the end of their contracts effectively induces the forced extension of contracts (or continuation of labour without contract), in circumstances where consent clearly cannot be freely given. The ITF adds that this raises serious questions of the precipitation of the international community to a form of forced labour on ships worldwide. The Committee refers in this regard to *Article III* of the MLC, 2006, according to which each Member shall satisfy itself that the provisions of its laws and regulations respect, in the context of the Convention, the fundamental rights to the elimination of forced or compulsory labour. The Committee observes that, implicit in the very inaction of certain Member States of ensuring crew changes or allowing seafarers to go back home, gives seafarers no option but to stay on board and creates conditions for them to languish for months on end in situations that could amount to forced labour. ***The Committee accordingly requests all ratifying States, in their various capacities as flag States, port States or labour-supplying States, to adopt the necessary measures or reinforce existing ones without delay to ensure that, in no case, seafarers are forced to continue working on extended contractual arrangements without their formal, free and informed consent.***

The MLC, 2006, contains a robust system to ensure the enforcement of its provisions. Under *Regulation 5.1.1*, *paragraph 1,* each Member is responsible for ensuring implementation of its obligations under the Convention on ships that fly its flag. ***Based on the information available, the Committee urges all ratifying countries with responsibilities as flag States to adopt the necessary measures and/or reinforce the existing ones without delay, including through more frequent inspections if necessary, to ensure that the ships that fly their flags fully comply with the provisions of the Convention. In particular, the Committee requests flag States, which have not yet done so, to ensure that:***

***(a) any extension of SEA is done with the seafarers' freely expressed consent (Regulation 2.1, paragraph 2));***

***(b) no fees or other charges for seafarer recruitment or placement, including the cost of any quarantine obligations before joining the ship, are borne directly or indirectly, in whole or in part, by the seafarer, other than the cost authorized under Standard A1.4, paragraph 5;***

***(c) the prohibition to forgo minimum annual leave with pay is strictly enforced, with the limited exceptions authorized by the competent authority (Regulation 2.4 and Standard A2.4, paragraph 3);***

***(d) seafarers are granted shore leave for their health and well-being and consistent with the operational requirement of their positions, subject to the strict respect of any public health measures applicable to the local population (Regulation 2.4, paragraph 2));***

***(e) seafarers are repatriated at no cost to themselves in the circumstances specified in the Convention, with strict respect of the default 11 months maximum period of service on board derived from the provisions of the Convention (Regulation 2.5 and Regulation 2.4);***

***(f) ships that fly its flag have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about seafarer fatigue and the particular nature and conditions of the voyage (Regulation 2.7);***

***(g) seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and have access to prompt and adequate medical care whilst working on board, including access to vaccination (Regulation 4.1);***

***(h) seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment (Regulation 4.3);***

***(i) seafarers have access to shore-based welfare facilities, where they exist, subject to the strict respect of any public health measures applicable to the local population (Regulation 4.4); and***

***(j) measures are taken to support seafarers' wellbeing on board, in particular during the extended periods of service on board, including arrangements for contacting family and loved ones.***

The Committee stresses that the failure to apply any of the core principles and requirements listed above under the pretext of a protracted health crisis risks, may render the Convention meaningless especially at a time and in circumstances where its protective coverage would be most needed. Such failure to apply any of the core principles and requirements listed above has a direct negative impact on navigational safety, thus increasing exponentially the risk of maritime accidents, with unpredictable consequences on human lives and the environment, and immeasurable disturbances on the international supply and distribution of necessity goods.

Under *Regulation 5.2.1, paragraph 1*, every foreign ship calling in the port of a Member may be the subject of inspections for the purpose of reviewing compliance with the requirements of the Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship. The Committee has highlighted the complementary crucial role that port State control plays in the

enforcement of the Convention. The Committee draws in particular governments' attention to the obligation to take steps to ensure that a ship shall not proceed to sea until any non-conformity has been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities, in the situations foreseen under *Standard A5.2.1*. In this regard, the Committee considers that the extreme fatigue of seafarers who have been on board beyond the default 11 months maximum period of service on board derived from the Convention not only constitutes a situation clearly hazardous for the safety and health of the seafarers concerned, but also profoundly endangers the safety of navigation in general. The Committee refers in this regard to *Standard A2.7, paragraph 2*, which aims to ensure that seafarers work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship and which highlights the need to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue. ***While noting the challenges faced by port State control authorities to conduct inspections during the pandemic, the Committee requests ratifying countries with responsibilities as port States which have not yet done so, to adopt the necessary measures without delay to fully comply with their obligations under the Convention. In particular, the Committee calls upon governments with port State responsibilities to:***

***(a) allow seafarers to enjoy their right to shore leave in accordance with Regulation 2.4, paragraph 2, subject to the strict respect of any public health measures applicable to the local population;***

***(b) facilitate the repatriation of seafarers serving on ships which call at their ports or pass through their territorial or internal waters (Standard A2.5.1, paragraph 7);***

***(c) allow and facilitate the replacement of seafarers who have disembarked and consequently ensure the safe manning of ships, by providing an expeditious and non-discriminatory treatment of new crew members who enter their territory exclusively to join their ships (Standard A2.5.1, paragraph 7);***

***(d) ensure that seafarers on board ships in their territory who are in need of immediate medical care are given access to medical facilities on shore (Regulation 4.1); and***

***(e) refrain from the adoption and/or repetitive modification of restrictive national measures and/or port regulations which may hinder the reasonable ex ante planning of ships' voyage and avoid inconsistent implementation and enforcement of the Convention vis-à-vis other contracting States.***

The Committee notes that labour-supplying States must play a crucial role in cooperating with flag and port States to ensure the respect of seafarers' rights. ***The Committee calls upon governments with labour-supplying responsibilities which have not yet done so, to adopt the necessary and immediate measures to ensure that the required facilities are put in place in relation to transport, testing and quarantine in order to receive their seafarers currently abroad and allow others to join their ships.***

The Committee notes that the COVID-19 pandemic has severely tested the legal framework set out in the MLC, 2006, for the protection of decent working and living conditions of seafarers. The pandemic has also laid bare the essential role of seafarers and the criticality of the shipping industry for the world economy. Regrettably, public and private responses on a global scale have not always been respectful of, or attentive to, the needs of the maritime labour force to the point that there is a pressing need for restoring full respect of basic seafarers' rights and drawing the right lessons for the future. The possibility to attract young talent into the seafarer profession might also be further compromised if the international community fails to deliver on this. The Committees welcomes the inclusion of the issue of the impact of COVID-19 on the maritime sector on the agenda of the Fourth meeting of the Special Tripartite Committee of the MLC, 2006, to be held in April 2021.

***The Committee will continue to examine the information provided by Governments and/or social partners about the issues raised in this general observation, with a view to ascertain compliance with the application of the Convention by ratifying Member States during this period of crisis.***

## Congo

### Maritime Labour Convention, 2006, as amended (MLC, 2006) (ratification: 2014)

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fourth consecutive year. As the requested report was not received, the Committee examined the application of the Convention on the basis of publicly available information.

*Article I. General questions on application. Implementing measures.* The Committee notes that the provisions of the Convention are mainly implemented by Act No. 30-63 of 4 July 1963 issuing the Merchant Shipping Code, amended by Act No. 63-65 of 30 December 1965; by orders and decrees of the Ministry of Transport, Civil Aviation and Merchant Shipping; and by Regulation No. 08/12-UEAC-088-CM-23 of the Central African Economic and Monetary Community (CEMAC) adopting the Community Merchant Shipping Code of 22 July 2012 (CCMM), which is directly applicable in the Congo and is one of the documents that

must be carried on board ships flying the Congolese flag and foreign ships operating in Congolese territorial waters. The Committee also notes that the Labour Code does not exclude seafarers from its scope of application. Having reviewed the available information, the Committee notes the inconsistency between certain national provisions and between these and the CCMM, as well as the absence of available information on the implementation of several provisions of the Convention. The Committee underscores the need to avoid any inconsistency in the applicable provisions. It recalls that, in accordance with *Article I* of the Convention, each Member which ratifies the Convention undertakes to give full effect to its provisions in order to secure the right of all seafarers to decent employment. ***The Committee therefore requests the Government to adopt without delay the necessary measures to implement the Convention, taking into account the matters raised in the request addressed directly to the Government. It further requests the Government to provide a copy of any legislative texts or other regulatory instruments once adopted, as well as full information on the implementation of the Convention, including updated statistics on the number of seafarers who are nationals or residents of the Congo or who work on board ships flying the Congolese flag. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

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

***[The Government is asked to reply in full to the present comments in 2023.]***

## Dominica

### Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 2004)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Article 2 of the Convention. Implementing legislation.* The Committee notes the Government's indication that a special Tripartite Committee has been appointed to advise the Government on all matters relating to legislation and institutional changes necessary for the ratification of the Maritime Labour Convention, 2006 (MLC, 2006). It also notes that a National Action Plan has been prepared in order to formulate recommendations to the Government on matters of maritime laws and administration. While welcoming the Government's active steps towards the ratification of the MLC, 2006, the Committee is bound to observe that the Government's first report on the application of Convention No. 147 does not contain any information on the laws or regulations and other measures giving effect to the specific requirements of the latter Convention. ***The Committee therefore requests the Government to indicate in detail how each of the Articles of the Convention is applied in national law and practice, and explain in particular in what manner the provisions of the International Maritime Act, 2002, and of the Dominica Maritime Regulations, 2002, are substantially equivalent to the Conventions mentioned in the Appendix of the Convention relating to safety standards, social security measures and shipboard conditions of employment and shipboard living arrangements, as required under Article 2 of the Convention.***

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

## Gabon

### Maritime Labour Convention, 2006, as amended (MLC, 2006) (ratification: 2014)

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fourth consecutive year. As the requested report has not been received, the Committee examined the application of the Convention on the basis of publicly available information.

*Article I. General questions on application. Implementing measures.* The Committee notes that the provisions of the Convention are mainly implemented through Regulation No. 08/12-UEAC-088-CM-23 of the Central African Economic and Monetary Community (CEMAC) issuing the Community Merchant Shipping Code of 22 July 2012 (hereinafter, CCMM), which is directly applicable to Gabon and is one of the documents that must be carried on board ships flying the Gabonese flag and foreign ships operating in Gabonese territorial waters. The Committee also notes that section 1 of the Labour Code does not exclude seafarers from its scope of application. The Committee notes the lack of available information on the implementation of several provisions of the Convention. It recalls that, in conformity with *Article I* of the Convention, each Member which ratifies it undertakes to give complete effect to its provisions in order to secure the right of all seafarers to decent employment. ***The Committee therefore requests the Government to adopt without delay the necessary measures to implement the Convention, taking into account the matters raised in the request addressed directly to the Government. It further requests the Government to provide a copy of any legislative texts or other regulatory instruments once adopted, as***

***well as full information on the implementation of the Convention, including updated statistics on the number of seafarers who are nationals or residents of Gabon or who work on ships that fly the Gabonese flag. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

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

## Maldives

### Maritime Labour Convention, 2006, as amended (MLC, 2006) (ratification: 2014)

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fourth consecutive year. As the requested report was not received, the Committee examined the application of the Convention on the basis of publicly available information.

*Article I. General questions on application. Implementing measures.* The Committee notes that, in its report on the Seafarers' Identity Documents Convention (Revised), 2003, as amended (No.185), the Government mentions that, following Law No. 35/2015 (First Amendment to Maldives Maritime Navigation Act No. 69/78), "power to make regulations related to maritime labour was delegated to the Minister". However, no regulations have been completed yet. In the same report, the Government also indicates that the High Court of the Republic of Maldives in its Case Number 2010/HC-A/62 significantly emphasized "the need for a specific legal regime for seafarers. As per the mentioned judgement, if normal employment laws are applied on seafarers, the law would fail to protect their rights as they have specific employment conditions arising from their unique working environment".

The Committee notes that the Maldives Maritime Navigation Act No. 69/78, as amended, is not available in English and that only a few Maldivian laws are available in English. Therefore, the analysis of the implementation of the Convention has mainly been based on the Employment Act of 2008. In this regard, the Committee notes that section 34(a) of this Act excludes "crew of sea going vessels" from the provisions of the Chapter on working time. The Committee accordingly understands that the rest of the provisions of the Employment Act are applicable to seafarers. ***The Committee requests the Government to adopt without delay the necessary measures to give effect to the provisions of the Convention and to provide information on any developments in this regard. It further requests the Government to supply copies in English of the relevant legislation, or a summary of the relevant provisions thereof. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 22** *(Iraq);* **Convention No. 23** *(Iraq);* **Convention No. 68** *(Equatorial Guinea);* **Convention No. 71** *(Djibouti, France);* **Convention No. 92** *(China: Macau Special Administrative Region, Equatorial Guinea, Iraq);* **Convention No. 108** *(Cameroon, Canada, China: Macau Special Administrative Region, Denmark: Faeroe Islands, Fiji, Saint Lucia);* **Convention No. 146** *(Cameroon, Iraq);* **Convention No. 147** *(Iraq);* **Convention No. 185** *(Congo, Croatia, Hungary, Jordan, Kiribati, Maldives, Montenegro, Myanmar, Republic of Moldova, Sri Lanka);* **MLC, 2006** *(Bahamas, Canada, China: Hong Kong Special Administrative Region, Congo, Denmark: Faeroe Islands, Fiji, Finland, France: New Caledonia, Gabon, Indonesia, Japan, Jordan, Kiribati, Liberia, Malaysia, Maldives, Malta, Mauritius, Netherlands: Curaçao, Portugal, Romania, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Seychelles, Slovenia, South Africa, Tuvalu, Viet Nam).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 22** *(Cuba, Egypt, France: French Polynesia)*; **Convention No. 23** *(Egypt, France: French Polynesia)*; **Convention No. 55** *(Egypt, France: French Polynesia)*; **Convention No. 56** *(Egypt, France: French Polynesia)*; **Convention No. 58** *(France: French Polynesia)*; **Convention No. 68** *(Egypt)*; **Convention No. 69** *(Egypt, France: French Polynesia)*; **Convention No. 92** *(Cuba, Egypt)*; **Convention No. 108** *(Czechia, Cuba, Estonia, France: French Polynesia, New Caledonia)*; **Convention No. 134** *(Egypt)*; **Convention No. 146** *(France: French Polynesia)*; **Convention No. 147** *(Egypt, France: French Polynesia)*; **Convention No. 163** *(Czechia)*; **Convention No. 164** *(Czechia)*; **Convention No. 166** *(Egypt)*; **Convention No. 185** *(Croatia)*; **MLC, 2006** *(Estonia)*.

# Fishers

## Liberia

### Minimum Age (Fishermen) Convention, 1959 (No. 112) (ratification: 1960)

### Medical Examination (Fishermen) Convention, 1959 (No. 113) (ratification: 1960)

### Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1960)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes that in its reports sent on the application of a number of fishing Conventions the Government indicates that the Liberian Maritime Law, RLM 107 (hereinafter the "Maritime Law") and the Liberian Maritime Regulations, RLM-108 (hereinafter the "Regulations") were amended in 2013 addressing the Committee's previous comments on the application of the Conventions, without providing any further information. ***Recalling that for more than 20 years the Government has been requested to provide information on the applicability of existing legislation to fishers and noting that it is not clear from the Government's response whether there are adequate provisions in the amended texts to cover fishers, the Committee requests the Government once again to clarify this issue.***

In order to provide a comprehensive view of the issues to be addressed in relation to the application of the fishing Conventions, the Committee considers it appropriate to examine them in a single comment, as follows.

*Minimum Age (Fishermen) Convention, 1959 (No. 112)*

*Article 1 of the Convention. Scope of application. Minimum age.* The Committee notes that section 326(2) of the Maritime Law states that "persons under the age of 16 shall not be employed or work on Liberian vessels registered under this Title, except on vessels upon which only members of the same family are employed, school ships or training ships". The Committee recalls that according to *Article 2* of the Convention, children under the age of 15 years shall not be employed or work on fishing vessels. The Committee also recalls that the exclusion of vessels upon which only members of the same family are employed is not provided for under the Convention. The Committee further notes that according to section 290 of the Maritime Law, its Chapter 10 – which deals with merchant seamen and minimum age – only applies to persons engaged on board vessels of at least 75 net tons. Moreover, section 326 of the same chapter, fixing the minimum age at sea, only applies to vessels registered under the Maritime Law. In this connection, section 51 limits the registration procedure to specific vessels, namely: (a) vessels of at least 20 net tons, owned by a citizen or national of Liberia and engaged solely in coastwise trade between ports of the country or between those of Liberia and other West African countries; and (b) seagoing vessels of more than 500 net tons engaged in foreign trade, owned by a citizen or national of Liberia. The Committee recalls that pursuant to *Article 1* of the Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters, with the only exception of fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation. ***The Committee requests the Government to clarify whether Chapter 10 of the Maritime Law applies to fishers. If that is the case, recalling that the Convention applies to all fishing vessels irrespective of tonnage or of the fact that only members of the same family are employed, the Committee requests the Government to adopt the necessary measures without delay in order to give full effect to the Convention. If that is not the case, the Committee requests the Government to indicate the national provisions giving effect to the requirements of the Convention.***

*Medical Examination (Fishermen) Convention, 1959 (No. 113)*

*Application of the Convention.* The Committee had previously requested the Government to provide clarifications on the applicable legislation to fishers with regard to medical certification. The Committee had noted the information provided by the Government that existing legislation only applied to fishing vessels of 500 tons or more. Recalling that the Convention applies to all fishing vessels irrespective of tonnage, the Committee had requested the Government to adopt the necessary measures to ensure that fishers employed on board fishing vessels of less than 500 tons are subject to the same medical certification requirements in accordance with the provision of the Convention. The Committee ***regrets*** to note that the Government has not provided a reply to its previous observation. ***The Committee therefore once again requests the Government to adopt without delay the necessary measures to give full effect to the provisions of the Convention.***

*Fishermen's Articles of Agreement Convention, 1959 (No. 114)*

*Application of the Convention.* In its previous comments, the Committee had requested the Government to explain how effect is given to the provisions of the Convention and to provide clarifications on the application of the existing legislation to fishing vessels. The Committee ***regrets*** to note that the Government provides no information in this regard. ***The Committee therefore once again requests the Government to adopt the necessary measures without delay to give full effect to the provisions of the Convention.***

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

## Sierra Leone

### Fishermen's Competency Certificates Convention, 1966 (No. 125) (ratification: 1967)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*Articles 3–15 of the Convention. Certificates of competency.* The Committee has been commenting for a number of years on the absence of laws and regulations giving effect to the Convention. ***The Committee asks the Government to provide detailed information on any concrete progress made in respect of the adoption of national laws implementing the Convention.*** The Committee understands that the Office remains ready to offer expert advice and to respond favourably to any specific request for technical assistance in this regard. ***Finally, the Committee requests the Government to supply up-to-date information concerning the fishing industry, including statistics on the composition and capacity of the country's fishing fleet and the approximate number of fishers gainfully employed in the sector.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 125** *(France: French Polynesia);* **Convention No. 126** *(Sierra Leone);* **Convention No. 188** *(Angola, Argentina, South Africa).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 113** *(Croatia, Cuba, Ecuador)*; **Convention No. 114** *(Ecuador)*; **Convention No. 125** *(France: New Caledonia, Trinidad and Tobago)*; **Convention No. 126** *(Denmark: Faroe Islands, France: French Polynesia and New Caledonia)*; **Convention No. 188** *(Estonia, France)*.

# Dockworkers

## Congo

### Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1986)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2021, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes with ***regret*** that the report submitted by the Government is identical to the most recent report submitted by the Government in 2007 which formed the basis for the Committee's observation in 2008 repeated in 2009, 2010 and 2011 for lack of a response from the Government. ***The Committee urges the Government to solicit technical assistance of the ILO to resolve any problems related to the application of this Convention, and hopes that a report will be supplied for examination by the Committee at it next session. In the meantime and in the absence of any new information, the Committee must, yet again, repeat its previous observation which read as follows:***

The Committee notes the information provided by the Government according to which a national advisory technical committee on occupational safety and health has been set up pursuant to Decree No. 2000-29 of 17 March 2000 which gives effect to *Article 7 of the Convention*. It also notes, however, that the information requested concerning *Articles 2, 4, 5, 6* and *11–36* are to be provided by the Government subsequently. As regards the further information the Committee has requested the Government to provide, the Committee notes that the Government has either not replied to questions raised by the Committee in its previous comments or it has provided information that is applicable to enterprises in general. The Government appears to imply that dockworkers should be treated in the same manner as other workers and ports be treated like any other enterprise. ***With reference to Articles 4–7, the Committee wishes to recall that the Government is required to take measures to give effect to the specific provisions in the Convention. The Committee must therefore once again repeat its previous observation which read as follows:***

The Committee draws the Government's attention to the absence of specific health and safety provisions for dock work. The Committee noted previously that a draft Order on safety and health in dock work had been prepared by the technical departments of the Ministry of Labour and Social Security. In its report for the period ending 30 June 1993, the Government repeated this information and added that the draft had been submitted for adoption. The Committee hopes that the provisions of this text will ensure the application of the following provisions of the Convention: *Article 4* (objectives and areas to be covered by measures to be established by national laws and regulations, in accordance with Part III of the Convention); *Article 5* (responsibility of employers, owners, masters or other persons as appropriate, for compliance with safety and health measures; duty of employers to collaborate whenever two or more of them undertake activities simultaneously at one workplace); *Article 7* (consultation of and collaboration between employers and workers). ***It asks the Government to provide a copy of the above Order as soon as it has been adopted.***

In its previous reports, the Government referred to Orders No. 9033/MTERFPPS/DGT/DSSHT on the organization and functioning of the socio-medical centres of enterprises in the People's Republic of the Congo and No. 9034/MTERFPPS/DGT/DSSHT laying down the procedures for the establishment of socio-medical centres which are common to several enterprises in the People's Republic of the Congo. ***Since these texts have not been received, the Committee would be grateful if the Government would provide a copy of them.***

*Article 6.* The Committee notes from the Government's report for the period ending 30 June 1993 that briefings are to be organized to inform workers about safety provisions in the place of work at which heads of establishment can alert them about the dangers arising from the use of machinery and the precautions to be taken. ***The Committee asks the Government to provide a copy of the provisions concerning the organization of these briefings and the measures taken to give effect to paragraph 1(c) of this Article.***

*Article 8.* The Committee notes the Government's statement in its report for the period ending 30 June 1993 that all safety measures are provided for in Chapter II of Order No. 9036 of 10 December 1986. The Committee notes that the above part of the Order provides for general protective measures whereas the Convention requires the adoption of measures specific to dock work. ***It asks the Government to indicate which provisions require the adoption of effective measures (fencing, flagging or other suitable means including, when necessary, cessation of work) to ensure that when the workplace has become unsafe, workers are protected until it has been made safe again.***

*Article 14.* The Committee notes from the Government's report for the period ending 30 June 1993 that the application of this Article is ensured by labour inspectors by means of inspections in enterprises. ***The Committee asks the Government to indicate which provisions ensure that electrical equipment and installations are so constructed, installed, operated and maintained as to prevent danger, and which standards for electrical equipment and installations have been recognized by the competent authorities.***

*Article 17.* The Committee notes that section 41 of Order No. 9036, cited by the Government in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention, includes specific measures only for the use of lifting gear in particular weather conditions (wind). ***The Committee asks the Government to indicate the measures taken to ensure that the means of access to a ship's hold or cargo deck are in conformity with the provisions of this Article.***

*Article 21.* The Committee notes the provisions of sections 47–49 of Order No. 9036 which the Government cites in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention. It notes that the above sections provide for protective measures for some machinery or parts of machines which can be dangerous. ***It asks the Government to indicate the measures taken or envisaged to ensure that all lifting***

***appliances, every item of loose gear and every sling or lifting device forming an integral part of a load comply with the provisions of the Convention.***

*Articles 22, 23, 24 and 25.* Further to its previous comments, the Committee notes that, in its report for the period ending 30 June 1993, the Government refers to the certification of machinery, including lifting appliances, which is conducted by technical inspectors and advisory bodies, as a general measure to ensure that lifting appliances are sound and in proper working order. However, these Articles of the Convention provide for a set of measures to ensure that appliances and loose gear can be used by workers without any danger or risk: testing of all lifting appliances and loose gear (every five years in ships); thorough examination (at least once every 12 months); regular inspection before use. ***The Committee asks the Government to indicate the provisions requiring the above measures to be taken in respect of all lifting appliances – on shore and on board – and of all loose gear.***

*Article 30.* The Committee notes that section 43 of Order No. 9036 referred to by the Government, does not relate to the attaching of loads to lifting appliances. ***It asks the Government to indicate which provisions relate to this matter.***

*Article 34.* ***The Committee asks the Government to provide a copy of the instructions concerning the wearing of personal protective equipment referred to by the Government in its report for the period ending 30 June 1993.***

*Article 35.* Further to its previous comments, the Committee notes that section 147 of the Labour Code regulates the evacuation of injured persons who are able to be moved and who are not able to be treated by the facilities made available by the employer. It notes that the Government also refers in its reports to Orders Nos 9033 and 9034 mentioned in paragraph 2 above. ***The Committee asks the Government to indicate the measures taken either under the above texts, or otherwise, to ensure that adequate facilities, including trained personnel, are available for the provision of first aid.***

*Article 37(1).* The Committee recalls that, under this provision of the Convention, committees which include employers' and workers' representatives must be formed at every port where there is a significant number of workers. ***Recalling the Government's statement that the health and safety committees provided for by the law have not been formed, the Committee asks the Government to indicate the measures taken to ensure the establishment of such committees in ports with a significant number of workers.***

*Article 38(1).* The Government indicates in its report that, in the absence of health and safety committees, instruction and training are entrusted to a specialist in the matter within the enterprise. ***The Committee asks the Government to provide information on the activities of these specialists.***

*Article 39.* The Committee notes that section 61 of Act No. 004/86 of 25 February 1986 establishing the Social Security Code gives effect in part to this Article of the Convention. ***It asks the Government to indicate the provisions which ensure that this Article is applied to occupational diseases.***

*Article 41(1)(a).* Further to its previous comments, the Committee notes that the Government refers to Order No. 9036 of 10 December 1986 as being the text which lays down general obligations for the persons and bodies concerned with dock work (ports being treated as any industrial enterprise) and that no specific measures have been taken in respect of dock work. ***The Committee asks the Government to indicate the measures taken or envisaged to set out the specific obligations taken for the persons and bodies concerned with dock work.***

***In the absence of any information on the application of the above provisions, the Committee asks the Government to indicate the specific measures which give effect to the following provisions of the Convention:***

- ***Article 9(1) and (2). Safety measures with regard to lighting and marking of dangerous obstacles.***
- ***Article 10(1) and (2). Maintenance of surfaces for traffic or stacking of goods and safe manner of stacking goods.***
- ***Article 11(1) and (2). Width of passageways and separate passageways for pedestrians.***
- ***Article 16(1) and (2). Safe transport to or from a ship or other place by water, safe embarking and disembarking, and safe transport to or from a workplace on land.***
- ***Article 18(1)–(5). Regulations concerning hatch covers.***
- ***Article 19(1) and (2). Protection around openings and decks, closing of hatchways when not in use.***
- ***Article 20(1)–(4). Safety measures when power vehicles operate in the hold; hatch covers secured against displacement; ventilation regulations; safe means of escape from bins or hoppers when dry bulk is being loaded or unloaded.***
- ***Article 26(1)–(3). Members' mutual recognition of arrangements for testing and examination.***
- ***Article 27(1)–(3). Marking lifting appliances with safe working loads.***
- ***Article 28. Rigging plans.***
- ***Article 29. Strength and construction of pallets for supporting loads.***
- ***Article 31(1) and (2). Operation and layout of freight container terminals and organization of work in such terminals.***
- ***Article 38(2). Minimum age limit for workers operating lifting appliances.***

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

## Republic of Moldova

### Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 2007)

*Legislative and regulatory framework implementing the Convention.* In its previous comments, while noting the Occupational Health and Safety Act (RM No. 186-XVI of 10 July 2008) and the Safety Rules for Work on Board Inland Navigation Vessels, the Committee requested the Government to specify the legislation and regulatory provisions giving effect to each Article of the Convention. The Government states that under section 20 of Act No. 595/1999 on the international treaties of the Republic of Moldova, the provisions of international treaties which, in line with their formulation, may be applied without the adoption of special normative acts, are enforceable and directly applicable in the judicial system of the Republic of Moldova. According to the Government, in so far as the Ministry of Economy and Infrastructure approved, on 18 December 2018 through Ordinance No. 604, the checklists for the control areas of the Naval Agency, including the checklist for the safety and security of operations in the port area, Articles 9(1) and (2); 10(1); 11(1) and (2); 12; 13(1), (2) and (4); 15; 16; 17(1); 18(1), (2), (3) and (4); 22; 23; 24; 27 and 38 of the Convention are directly applicable. The Government also specifies that the measures aimed at ensuring the proper application of those Articles of the Convention are at the approval stage. ***While noting the Government's indication that a certain number of Articles of the Convention are directly applicable under Ordinance No. 604 in question, the Committee notes that, broadly speaking, the information provided in the report remains insufficient in as much as it still does not enable the Committee to examine the effect given to various provisions of the Convention. The Committee recalls the need to provide more precise information by specifying the provisions of the law or national regulations that give effect to each Article of the Convention. The Committee trusts that the government will take all necessary steps to provide such information in its next report, including information on measures to ensure the proper implementation of the Articles of the Convention referred to by the Government. In this regard, the Committee refers to the list of provisions below on which it requests further information regarding the measures taken for their implementation.***

Furthermore, given its importance, the Committee requested the Government to transmit a copy of the Giurgiulesti International Free Port Rules, and any standards or rules applicable to employers and workers. In this regard, the Committee notes the Government's indication that the Naval Agency is developing a set of regulations at departmental level, including the rules on the Giurgiulesti Port complex and the rules for captains of Giurgiulesti Port. ***The Committee requests the Government to provide a copy of these rules, if possible in one of the languages of the Office.***

*Article 1 of the Convention. Dock work.* In its previous comments, the Committee asked the Government to provide information on the manner in which the employers' and workers' organizations concerned were consulted in establishing the definition of "dock work". The Committee notes the Government's indication that, to date, no port employers' organization has been established. The Government specifies that, in accordance with Act No. 239/2008 on the transparency of decision-making processes, public consultation is mandatory throughout the formulation and adoption process for technical regulations, or any other legislative Act. ***The Committee hopes that, in the future, the Government will be able to indicate the manner in which the workers' organizations concerned and, where relevant, the employers' organizations, are consulted on or otherwise participate in the establishment and revision of "dock work".***

*Article 5(1). Responsibility for compliance with the measures referred to in Article 4(1).* In its previous comments, the Committee noted the Government's indication that section 10(1) of the Occupational Safety and Health Act provides that the employer shall take the necessary measures to protect the health and safety of workers, and requested the Government to provide further information on the national laws or regulations which make appropriate persons responsible for compliance with all of the measures referred to in *Article 4* of the Convention. The Committee notes the Government's indication that the Occupational Safety and Health Act is implemented through Governmental decision No. 95 of 5 February 2009. ***The Committee requests the Government to provide a copy of Governmental decision No. 95 of 5 February 2009, indicating the relevant provisions which make appropriate persons responsible for compliance with all of the measures referred to in Article 4 of the Convention.***

*Article 6(1). Measures to ensure the safety of dockworkers.* The Committee notes the Government's indication that the monitoring functions relating to safety in the Giurgiulesti Port complex currently fall to the Naval Agency, which has planned to lead periodic safety information campaigns in the port area. ***The Committee requests the Government to provide information concerning the periodic safety information campaigns led in all the country's dock work.***

*Article 7(2). Provisions for close collaboration between employers and workers.* The Committee previously noted the establishment of a trade union committee to give effect to the provisions of the Convention. The Committee notes that, in its previous report, the Government nevertheless indicates that a trade union committee for employees in the Giurgiulesti Port complex has still not been set up. ***The***

***Committee requests the Government to provide information on the trade union committees or any other mechanism in place in the country's ports, including the Giurgiulesti Port, to ensure the full collaboration and consultation of employers and workers in the application of the measures set forth in Article 4(1) of the Convention.***

*Article 14. Installation, construction, operation and maintenance of electrical equipment.* The Committee notes the indication that, in accordance with Act No. 174 on energy of 21 September 2017, the National Agency for Energy Regulation, as the body responsible for oversight of national energy, is tasked with formulating and approving the regulations on the operations of power stations, electricity networks and end users' electrical installations. In this respect, in 2019, the National Agency published on its website the draft operating rules for electrical installations and the draft safety rules for the operation of electrical installations in order to submit them for public consultation. ***The Committee requests the Government to keep it informed of the entry into force of this new regulatory framework and to specify the main provisions giving effect to this Article of the Convention.***

*Article 15. Adequate and safe means of access to the ship during loading or unloading.* The Committee notes the indication that in the Giurgiulesti Port complex, handrails, special access passageways, and stairways joined with the various levels guarantee access to the ships. ***The Committee requests the Government to continue providing information on the measures taken to ensure in all the country's ports means of access guaranteeing safety when a ship is being loaded or unloaded alongside a quay or another ship.***

*Article 16. Safe transport to or from a ship or other place by water, safe embarking and disembarking, and safe transport to or from a workplace on land.* The Committee notes the indication that the Naval Agency is developing a set of measures at departmental level, including regulations regarding the Giurgiulesti Port complex, which will contain the relevant provisions on safe transport in the port area and in the maritime area around the port. Once approved in line with the legal procedures, these regulations will be transmitted by the Government to the Office. ***The Committee requests the Government to provide a copy of the regulations once adopted and to specify the main measures giving effect to this Article of the Convention.***

*Article 17. Access to the hold or deck of a vessel.* The Committee notes the indication that the Naval Agency is looking into the possibility of developing technical regulations on alternative means of access, as stipulated under *Article 17(1)(b)*. ***The Committee requests the Government to report on all new developments in this regard and hopes that it will be in a position to indicate the manner in which the competent authority determines the acceptability of the means of access to the hold or deck of a vessel, thereby giving full effect to this Article of the Convention.***

*Article 34. Provision and use of personal protective equipment. Care and maintenance of personal protective equipment and clothing.* The Committee notes the Government's indication that personal protective equipment and clothing is required for all workers involved in cargo handling operations in ports, port construction work and other work requiring a physical presence in the operational port area. The Committee also notes the indication that the Naval Agency is developing a set of regulations for ports. ***The Committee requests the Government to specify the legislative or regulatory text establishing the circumstances in which the provision and proper maintenance by the employer of personal protective equipment and clothing, and the proper use and care by workers of such equipment and clothing, is required. In the absence of such a text, the Committee encourages the Government to take the measures necessary to enable the Naval Agency to adopt a regulatory text in order to give full effect to this Article of the Convention.***

*Article 38(1). Provision of adequate training and instruction.* The Committee notes the indication that the dockworkers in the inland port of Ungheni and all residents (economic agents) of Giurgiulesti International Free Port must, on a monthly basis or whenever appropriate, take classes and test their knowledge regarding their functions and the equipment used. ***The Committee requests the Government to specify the content of the classes referred to in the ports of Ungheni and Giurgiulesti, and to indicate to what extent prior training and instruction relating to risks and precautions to be taken are made available to workers employed in dock work in the country.***

***In the absence of information on their application, the Committee once again requests the Government to specify the measures taken or envisaged, in law or in practice, to give full effect to the following provisions of the Convention:***

- ***Article 6(2). Consultation of workers concerning working procedures.***
- ***Article 7(1). Provisions under which the competent authority consults the organizations of employers and workers concerned.***
- ***Article 8. Measures to protect workers from health risks other than dangerous fumes.***
- ***Article 9. Safety measures with regard to lighting and marking of dangerous obstacles.***
- ***Article 10. Maintenance of surfaces used for vehicle traffic or stacking of goods in safe conditions.***
- ***Article 11. Width of passageways for pedestrians and of passageways for cargo-handling appliances.***

- ***Article 12. Suitable and adequate means for fighting fire.***
- ***Article 13(1) to (3) and (5) to (6). Effective guarding of all dangerous parts of machinery, possibility of cutting off the power to machinery in an emergency, protective measures during cleaning, maintenance or repair work and adequate precautions if any guard is removed.***
- ***Article 19. Protection around openings and decks.***
- ***Article 20. Safety measures when power vehicles operate in the hold; hatch covers secured against displacement; ventilation regulations; and safe means of escape from bins or hoppers when dry bulk is being loaded or unloaded.***
- ***Article 21. Design of lifting appliances, loose gear and lifting devices.***
- ***Article 22(3) and (4). Retesting of shore-based lifting appliances and certification of lifting appliances and items of loose gear.***
- ***Article 24. Inspection of loose gear and slings.***
- ***Article 25. Registers of lifting appliances and loose gear.***
- ***Article 26. Mutual recognition of arrangements for testing and examination.***
- ***Article 31. Operation and layout of freight container terminals and organization of work in such terminals.***
- ***Article 32. Handling, storing and stowing of dangerous substances; compliance with international regulations for transport of dangerous substances; and prevention of worker exposure to dangerous substances or atmospheres.***
- ***Article 35. Removal of injured persons.***
- ***Article 36(3). Medical examinations to be carried out free of cost to the worker and confidentiality of the records of medical examinations.***
- ***Article 37. Safety and health committees.***
- ***Article 38(2). Minimum age for operating lifting appliances and other cargo-handling appliances.***
- ***Article 39. Notification of occupational accidents.***
- ***Article 40. Regulations concerning suitable sanitary and washing facilities.***
- ***Article 41. Assigned duties in respect of occupational safety and health, and appropriate penalties.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes the Government's indication that the Convention is partially implemented with the participation of several administrative bodies such as: the Naval Agency, responsible for monitoring occupational safety in the Giurgiulesti Port complex; the National Labour Inspectorate, in charge of investigating occupational accidents and formulating recommendations regarding occupational safety; the line ministries, which ensure inclusive public consultation with the dockworkers and transparency of the decision-making process; and the economic agents responsible for the periodic training and skills assessment pertaining to occupational safety and health in the port area. ***The Committee requests the Government to continue providing information on the manner in which the Convention is applied in the country and, in particular, to provide information on the number of dockworkers protected by the legislation, the number and nature of the violations reported, and the number of industrial accidents and cases of occupational disease reported.***

*Legislative and regulatory texts giving effect to the Convention.* In general, the Committee notes that the Government has not provided copies of the legislative and regulatory texts giving effect to the Convention mentioned in its report. ***Referring to its previous comments, the Committee requests the Government to provide copies of the texts mentioned and any other relevant texts relating to safety and health in dock work, in particular the Safety Rules for Work on board inland navigation vessels (referred to in its previous reports), Ordinance No. 604, approved on 18 December 2018 by the Ministry of Economy and Infrastructure, Governmental decision No. 95 of 5 February 2009 on the implementation of the Occupational Safety and Health Act, and the other regulatory texts being developed mentioned in the present comment, where possible in one of the working languages of the Office.***

***[The Government is asked to reply in full to the present comments in 2024.]***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 32** *(Chile, China, China: Hong Kong Special Administrative Region, Croatia, Kyrgyzstan, Singapore);* **Convention No. 137** *(Costa Rica, Cuba, Egypt, Finland);* **Convention No. 152** *(Cuba, Denmark, Ecuador, Egypt, Finland, Montenegro).*

## Supplementary information received in 2020 to the 2019 reports

The following Member States have provided supplementary information in 2020. Their examination by the CEACR have however not led to a change to the CEACR comments issued in 2019: **Convention No. 32** *(Canada)*; **Convention No. 137** *(France)*; **Convention No. 152** *(France)*.

# Indigenous and tribal peoples

## Brazil

### Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2002)

The Committee notes the observations of the Single Confederation of Workers (CUT), which were received on 31 October 2020. The Committee observes that the CUT, in addition to providing information on issues already raised by the Committee in its previous comments, refers to the impact of the COVID-19 pandemic on indigenous peoples. The CUT claims that as a result of racial and socio-economic inequalities, and lack of assistance from the State, indigenous peoples, in particular Quilombola communities and isolated or recently contacted indigenous peoples, are in a situation of great vulnerability and heightened risk from the effects of COVID-19.

The Committee notes the Government's response to the observations of the CUT relating to the impact of COVID-19, received on 4 December 2020. Given that this response was received too late for examination by the Committee at its current meeting, the Committee proposes examining both communications in due course. ***In addition, the Committee requests the Government to provide its responses to the remaining observations presented by the CUT.***

Furthermore, the Committee reiterates the comments adopted in 2019 which are reproduced below.

The Committee notes the observations of the International Organisation of Employers (IOE), received on 2 September 2019, which contain general comments on the application of the Convention; the joint observations of the IOE and the National Confederation of Industry (CNI), received on 31 August 2018; the observations of the National Confederation for Typical State Careers (CONACATE), which include general comments on the application of the Convention received on 28 August 2017, and the observations of the General Confederation of Workers of Peru (CGTP), received on 23 March 2017, which include a report by COICA (a Peruvian indigenous peoples' organization) on the application of the Convention in various countries.

*Representation made under article 24 of the ILO Constitution. Right of Quilombola communities to the lands they traditionally occupy. Alcântara space launch centre.* For many years, the Committee has been examining the question of the impact of the establishment of the Alcântara space centre (CEA) and the Alcântara launch centre (CLA) on the rights of the Quilombola communities of Alcântara. The Committee notes that the Governing Body at its 337th Session (October–November 2019) decided that the representation made under article 24 of the ILO Constitution by the Union of Rural Workers of Alcântara (STTR) and the Union of Family Agriculture Workers of Alcântara (SINTRAF), alleging non-observance by Brazil of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), was receivable. The Committee observes that the allegations in the representation refer to the consequences of the extension of the area covered by the Alcântara space launch centre on the rights of the Quilombola communities and the lands traditionally occupied by them. ***In accordance with its usual practice, the Committee has decided to defer the examination of this issue until the Governing Body adopts its report on the representation.***

*Article 3 of the Convention. Human rights.* The Committee observes that certain United Nations bodies and the Inter-American Commission on Human Rights (IACHR) have expressed concern in recent years at the situation of conflict surrounding territorial claims and at threats and attacks on the rights and integrity of the indigenous peoples of Brazil. The Committee notes the press release of 8 June 2017 of the Office of the United Nations High Commissioner for Human Rights (title: "Indigenous and environmental rights under attack in Brazil, UN and Inter-American experts warn") in which three UN Special Rapporteurs and a IACHR Rapporteur stated: "In the last 15 years, Brazil has seen the highest number of killings of environmental and land defenders of any country. [...] Indigenous peoples are especially at risk". The Committee notes that the IACHR, in its preliminary observations of 12 November 2018 concerning its visit to Brazil, emphasized that harassment, threats and murders characterized land disputes and forced displacements. The IACHR noted with concern that the impunity surrounding these acts of rural violence was contributing towards their perpetuation and increase. Furthermore, at the time of its travel to Mato Grosso state, the IACHR observed the grave humanitarian situation faced by the Guarani and Kaiowá peoples, largely due to violations of their land rights. The IACHR visited the Dorados-Amambaipeguá indigenous lands, and received information on the victims of the "Caaraó massacre", during which one person was killed and another six members of the community were injured, as well as reports of frequent armed attacks by militias.

The Committee also notes that the IACHR granted precautionary measures on 29 September 2019 in favour of members of the Guyraroká community of the Guarani Kaiowá indigenous people, since they had *prima facie* evidence that families of the community are in a serious and urgent situation because their rights to life and physical integrity are at serious risk. The IACHR takes into consideration reports concerning the high level of conflict between members of the community and landowners and concerning death threats (Resolution 47/19, Precautionary Measure (PM) 458/19).

The Committee notes this information with ***concern***. ***The Committee urges the Government to take all the necessary measures to protect the life, physical and psychological integrity, and all the rights guaranteed by the Convention to indigenous and tribal peoples. The Committee considers that indigenous and tribal peoples can only assert their rights, particularly with regard to possession and ownership of the lands they traditionally occupy, if adequate measures are adopted to guarantee a climate free of violence, pressure, fear and threats of any kind.***

*Articles 6, 7, 15 and 16. Consultations*. In its previous comments, the Committee referred to the process for regulation of the indigenous and Quilombola peoples' right to consultation which had been under way since 2012. In this regard, the Government indicated that the process of negotiation with the peoples concerned had encountered certain difficulties and that the Secretariat-General of the Government was endeavouring to restore the dialogue. The Government was considering the possibility of proposing a potential consultation mechanism on the basis of a practical case. The Committee also noted that the CNI and the IOE had emphasized that the absence of regulation on the consultations required by the Convention was generating legal uncertainty for enterprises.

In its report, the Government indicates that in recent years a number of indigenous peoples have taken initiatives in this area, indicating to the State the manner in which they wish to be consulted. In this context, they have drawn up their own protocols for prior consultation in which they formalize the diversity of procedures for building dialogue enabling effective participation in decision-making processes that can affect their lives, their rights or their lands. The Government refers in particular to the support given by the National Foundation for Indigenous Affairs (FUNAI) for drafting protocols for consultations involving the Xingu indigenous peoples in 2016, the Krenak indigenous people in 2018 and the Tupiniquim people in 2018, and to discussions under way in the Roraima Indigenous Council (CIR). In this regard, the Committee observes that, according to information on the website of the Public Prosecutor's Office, other communities have adopted protocols of this type. Moreover, regarding policies, programmes, actions and projects relating to social assistance for indigenous peoples, the Government indicates that FUNAI is intensifying efforts to sign agreements with provider institutions in order to ensure respect for the particular social and cultural characteristics of these peoples and to respect their right to free and informed prior consultation where appropriate.

The Government also points out that there is growing demand for infrastructure from indigenous communities (for electric power, water storage and distribution or road construction). In this regard, FUNAI ensures that all actions, activities or projects respect the right to free and informed prior consultation, so that relations between the Brazilian State and the indigenous communities are not vertical. The Government indicates that FUNAI, through its decentralized units, supplies technical, logistical and at times financial support to partner bodies and municipalities under whose jurisdiction indigenous lands are located in order to organize the necessary meetings.

The Committee welcomes the drawing up of consultation protocols by certain communities and the role played by FUNAI in this respect. ***The Committee requests the Government to provide further information on the status of these protocols and to indicate how it is ensured in practice that the protocols are applied in a systematic and coordinated manner through the country whenever consideration is being given to legislative or administrative measures which may affect indigenous peoples directly. The Committee also encourages the Government to continue its efforts with a view to the adoption of a regulatory framework on consultations which will enable the indigenous and Quilombola peoples to have a suitable mechanism guaranteeing them the right to be consulted and to participate effectively whenever consideration is being given to legislative or administrative measures which may affect indigenous peoples directly, and which will be conducive to greater legal certainty for all stakeholders. The Committee recalls the need to consult the indigenous and Quilombola peoples as part of this process and to enable them to participate fully through their representative institutions so as to be able to express their views and influence the final outcome of the process. It requests the Government to provide information on the consultation processes undertaken, including on the basis of the consultation protocols developed by the various indigenous communities and the results thereof.***

*Article 14. Lands.* The Committee recalls that the two bodies responsible for the identification and demarcation of lands and the issuing of land titles are FUNAI (for lands traditionally occupied by indigenous peoples) and the National Institute for Settlement and Agrarian Reform (INCRA) (for lands traditionally occupied by the Quilombola peoples). The procedures are regulated by Decree No. 1775/96 and Decree No. 4887/03, respectively. The Government describes the various stages of the procedure, including: the request to open an administrative procedure for regularization; the preparation of a zone study (containing anthropological, historical, cartographic, land ownership and environmental elements); the declaration of limits; the opposition phase; the physical demarcation; the publication of the recognition order establishing the limits of the territory; and the registration and concession of the titles of collective ownership to the community by decree. The Committee notes the statistical information sent by the Government on land demarcation procedures in the states of Mato Grosso and Rio Grande do Sul. It observes that in Rio Grande do Sul, of a total of 48 procedures, 20 have resulted in regularization and

28 are in progress (at the study, declaration or demarcation stage). Regarding Mato Grosso, of a total of 50 procedures, 24 have resulted in regularization and 26 are in progress. The Committee also notes that, according to information on the FUNAI website, 440 lands have been regularized in the country as a whole. Moreover, 43 lands have had their limits identified, 75 lands have had their limits declared and nine lands have had their limits certified. Lastly, for 116 lands, the procedure is at the study stage.

The Committee notes that CONACATE refers in its observations to Constitutional Amendment Proposal No. 215/2000, under examination by the National Congress, the aim of which is to confer exclusive authority on the National Congress to approve the demarcation of lands traditionally occupied by indigenous peoples and also to ratify demarcations which have already been certified. CONACATE indicates that the final decision on any new demarcation of these lands would no longer be under the authority of the competent ministry but under the authority of the National Congress, where agri-industry is heavily represented.

The Committee also observes that, according to the information available on the website of the Federal Supreme Court (STF), in September 2019 FUNAI filed an extraordinary appeal (1.017.365/SC) with the Supreme Court on the issue of the "time frame". The "timeframe" approach followed by certain jurisdictions means that only lands actually occupied on 5 October 1988, the date of promulgation of the Constitution, should be recognized as lands traditionally occupied by indigenous peoples. Since the STF recognized the general scope of the constitutional issue under examination, its final decision will have binding force in all instances of the judiciary. Moreover, the Committee notes that, according to information on the Congress website, two interim measures were adopted in 2019 aimed at transferring the authority to identify, delimit, demarcate and register indigenous lands from FUNAI to the Ministry of Agriculture, Livestock and Supplies (MPO 870/2019 and MP 886/2019). The first measure was rejected by the National Congress and the second measure was deemed unconstitutional by the Supreme Court.

The Committee observes that the IACHR, in its preliminary observations of 12 November 2018 relating to its visit to Brazil, stated that it had received various testimonies concerning the difficulties and long delays which indigenous communities face regarding access to land ownership. The result of these difficulties was that public lands intended for these communities were occupied by landowners or private mining enterprises, and this gave rise to conflicts involving expulsions, displacements, invasions and other forms of violence. The IACHR also expressed concern at the weakening in recent years of institutions such as FUNAI.

The Committee recalls that *Article 14* of the Convention provides that the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. In this regard, the Committee emphasized in its General observation of 2018 that recognition of traditional occupation as the source of ownership and possession rights is the cornerstone on which the land rights system established by the Convention is based. ***The Committee trusts that the Government will continue taking all necessary measures to ensure the full application of the Convention with regard to the ownership and possession rights of indigenous and tribal peoples over all the lands which they traditionally occupy. It requests the Government to take the necessary measures to follow up in the very near future on the procedures pending before FUNAI concerning the delimitation, demarcation and registration of indigenous lands and before INCRA concerning lands traditionally occupied by Quilombola communities. The Committee in particular requests the Government to provide information on the measures taken regarding the situation of the Guarani and Kaiowá peoples. The Committee further requests the Government to provide information on the human and material resources allocated to both FUNAI and INCRA to fulfil their mandate at every stage of the procedure – studies, delimitation, demarcation and registration of lands.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## Guatemala

### Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1996)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) received on 30 August 2019 and the observations of the International Organisation of Employers (IOE), received on 2 September 2019, which contain general comments on the Convention. Likewise, it notes the joint observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala received on 30 September 2019, which were

formulated together with the Maya Waquib' kej National Coordination and Convergence, the Association of Lawyers and Notaries of Guatemala (NIM AJPU), the Cultural Survival (Sobrevivencia Cultural) Association, the Committee of United Agricultural Workers (CUC), the Political Alliance for the Women's Sector (APSM), the Madre Selva Ecologist Collective and the Maya, Garifuna and Xinca Ancestral Authorities. The Committee notes the Government's replies to the observations from the IOE and the CACIF, as well as to the observations from the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, received on 30 October 2019.

The Committee also notes the supplementary observations received from the CACIF and the IOE on 1 October 2020. Lastly, the Committee notes the observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala received on 16 October 2020. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes that some of the information provided by the Government refers to measures taken within the framework of the health and economic crisis caused by the COVID-19 pandemic to provide advice to workers belonging to indigenous peoples on their labour rights and provide them with economic support. The Government indicates that, as one of the vulnerable groups affected by the situation, indigenous peoples have benefited from urgent action to address their financial needs.

The Committee notes that, in their supplementary observations, the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala allege that certain of the measures adopted by the authorities in the context of the pandemic, such as the restrictions on freedom of movement, have had a disproportionate impact on the economic situation of rural indigenous communities. The trade union organizations also allege that certain indigenous communities have not benefited from health protocols to combat COVID-19 or from educational measures, such as courses via television, to which they did not have access. ***The Committee trusts that within the framework of the measures that the Government has reported have just been taken, it will be ensured that indigenous peoples benefit from appropriate protection against the COVID-19 pandemic and its consequences.***

*Articles 2 and 33 of the Convention. Coordinated and systematic action. Institutions and national policy for indigenous people*s. In its earlier comments, the Committee noted the creation of the Office for Indigenous Peoples and Interculturality and of the process engaged for the development of the Indigenous Peoples and Interculturality Policy. It also noted the information regarding institutional instability, and the lack of a solid legal framework, budget and personnel to attend to the demands of the indigenous peoples. Accordingly, the Committee requested the Government to ensure the effective coordination and harmonization of the activities carried out by the different institutions responsible for implementing the rights provided in the Convention, defining their legal framework and ensuring the required resources.

The Committee notes from the Government's report the establishment in January 2019 of the Special Social Development Office to replace the Office for Indigenous Peoples and Interculturality. The mandate of the new Office, which includes the Vice-President of the Republic, is to provide technical guidance on the design of development policies for indigenous peoples, coordinate the design and management of an action plan for indigenous peoples and interculturality, and support the development of indigenous institutions. The Committee notes that the Office has established six thematic working groups for the most excluded and vulnerable indigenous peoples, including the thematic working group on indigenous peoples. The mandate of this working group includes improving mechanisms for the management of the services provided by State institutions to indigenous peoples, promoting action for the development of consultation processes and a legislative agenda focused on indigenous peoples. The Committee notes the supplementary information provided by the Government in 2020 in which it indicates that responsibility for the thematic working group on indigenous peoples has been transferred to the Ministry of Labour and Social Welfare. It also notes the information on the activities and meetings held by this working group to address issues relating to the rights of indigenous peoples (such as their labour rights, the coordination and language training of personnel in State bodies that provide public services in indigenous communities, and the enforcement of judicial sentences). The Committee also observes that, in accordance with its mandate of inter-institutional coordination and cooperation, the working group carried out an orientation exercise with its members to identify areas for intervention in line with national priorities and indicators focusing on indigenous peoples.

The Committee notes from the observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala that there are many dispersed, weak, underfunded and unstable indigenous institutions and services, a situation which hampers the establishment of effective public policies for indigenous peoples; they add that there is no effective mechanism enabling indigenous peoples to participate in areas of interest to them.

The Committee notes the changes made to the institutions competent to deal with matters relating to the peoples covered by the Convention, and particularly the establishment of the thematic working group on indigenous peoples in the Ministry of Labour and Social Welfare. ***The Committee trusts that the establishment of the thematic working group will contribute to the development of a robust and stable***

***institutional framework for indigenous peoples. In this regard, the Committee requests the Government to provide information on the action taken by the thematic working group for indigenous peoples to ensure that the many bodies responsible for the matters covered by the Convention take systematic and coordinated action in cooperation with indigenous peoples. The Committee once again requests the Government to provide specific information on the means and resources available to the thematic working group for indigenous peoples and the other institutions dealing with matters concerning indigenous peoples to enable them to discharge their mandates, and information on the analyses conducted on the results of its actions.***

The Government indicates that the formulation of the national policy for indigenous peoples was under the direction of the Office for Indigenous Peoples, and that its development is now the responsibility of the thematic working group for indigenous peoples. The Autonomous Popular Trade Union Movement and the Global Unions of Guatemala indicate in their observations that neither the indigenous peoples nor the trade unions have been consulted on the proposed policy. In reply to these observations, the Government reports that the indigenous peoples have participated in the formulation of the policy since 2014 through community consultation days held in different locations to facilitate access and participation by local leaders. It adds that, for the holding of the community days, support was sought from institutions and organizations with a presence in the communities, such as the Academy of Maya Languages of Guatemala, the Office of the Defender of Indigenous Women, indigenous municipalities and local indigenous organizations. In its supplementary information, the Government indicates that the subject of the draft policy on indigenous peoples and interculturality 2019–2032 continues to be on the agenda of the thematic working group, which has established an inter-institutional steering committee with members of the General Secretariat of Planning and Programming of the Office of the President. However, this action has been left pending by the declared state of emergency in March 2020 due to the COVID-19 pandemic.

***The Committee requests the Government to continue providing updated information on the progress made in the adoption of the policy on indigenous peoples and interculturality, indicating precisely how the participation of indigenous peoples has been secured in the development of the policy throughout the national territory, the contribution of these peoples to the draft policy and when it is envisaged that the policy will be finalized.***

*Implementation of the Peace Agreement.* In its previous comments, the Committee referred to various commitments drawn up as part of the Agreement on Identity and Rights of Indigenous Peoples, part of the Peace Agreements of 1996, which have not been met, and it requested the Government to provide information on the measures adopted for their implementation. The Government reiterates that the Secretariat for Peace is responsible for follow-up and for coordinating the implementation of the Agreement on Identity and Rights of Indigenous Peoples, also providing technical, professional and logistical support. The Committee notes that the United Nations Committee on the Elimination of Racial Discrimination (CERD), in its 2019 concluding observations regarding Guatemala, reiterated its concern at the scant progress in implementing the Agreement on Identity and Rights of Indigenous Peoples, and at the absence of a human rights and gender focus in the implementation of the National Reparations Programme (Document CERD/C/GTM/CO/16-17). In the written information communicated to the Committee on the Application of Standards of the International Labour Conference in 2019, the Government reaffirmed its unrestricted interest and commitment in taking the necessary actions to give continuity to the fulfilment of those commitments that are pending or partially fulfilled. ***The Committee requests the Government to intensify its efforts to implement the Agreement on Identity and Rights of Indigenous Peoples, with the participation of the indigenous peoples, and to provide information on progress achieved, pointing to possible obstacles to its full implementation. The Committee also requests the Government to communicate information on the activities of the national compensation programme for victims of the armed conflict belonging to the indigenous peoples.***

*Article 3. Human rights.* In previous comments, the Committee expressed its deep concern at the considerable increase in acts of violence and repression of social protests by indigenous peoples, and firmly urged the Government to take measures to investigate the acts of violence and to set in motion the relevant judicial proceedings to identify and penalize the perpetrators. The Committee notes the information provided by the Government on the current situation of the investigations undertaken by the Office of the Public Prosecutor and the progress in the criminal proceedings relating to four murders and attacks on the physical integrity of leaders and defenders of the indigenous peoples. It also notes the information provided by the Deputy Ministry of Security of the Ministry of the Interior on the risk analyses carried out by the Department for the Protection of Persons and Security and the security measures adopted for the family members and persons close to the murdered leaders. The Government indicates that since 2015 there have been no investigations directly related to the repression of social protest by indigenous peoples. The Committee also notes the information provided by the Office of the Public Prosecutor concerning 11 open cases of murder and threats against defenders and/or leaders of indigenous peoples, which are under investigation. With regard to the murder of indigenous persons

during the social protests in Totonicapán in October 2012, referred to by the Committee in previous comments, the Government reports that the seven persons accused of those crimes have been placed under measures alternative to pretrial detention ordered by the criminal court of first instance. An appeal against those measures has been filed by the Office of the Public Prosecutor and the Association of 48 Cantons of Totonicapán.

The Committee notes from their observations that the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala refer to the murder of two elected mayors of Maya origin, as well as to the persecution of indigenous communicators. It also notes, from its 2019 concluding observations concerning Guatemala, that CERD remains seriously concerned at the acts of violence, threats and attacks against indigenous and Afro-descendent leaders and rights defenders, and also at the improper use of criminal procedure to criminalize those defenders (CERD/C/GTM/CO/16-17). Moreover, the United Nations Committee against Torture (CAT), in its 2018 concluding observations on Guatemala, indicates that private security companies sometimes took on the functions of the National Civil Police, creating an environment of intimidation amongst the indigenous communities (CAT/C/GTM/CO/7). The Committee notes that the Government, in the written information submitted in 2019 to the Committee on the Application of Standards, refers to the development of a Public Protection Policy for Human Rights Defenders in Guatemala, and to the dissemination, at the national level, of the Guatemalan system for monitoring the recommendations of the international human rights protection systems.

The Committee notes this information and reiterates its ***deep concern*** at the persistent reports of murders and attacks against defenders of indigenous peoples and indigenous communicators, and also at the absence of information on judicial decisions determining responsibilities and penalizing the perpetrators. The Committee recalls that the rights enshrined in the Convention can only be exercised where fundamental human rights, especially those regarding life and security of the person, are fully respected and guaranteed. ***The Committee therefore once again firmly urges the Government to intensify its efforts to ensure progress in the investigations and proceedings to identify and penalize the perpetrators and instigators of the acts of violence and persecution of defenders of indigenous peoples and indigenous communicators. The Committee also requests the Government to provide information on the progress made in the adoption of the Public Protection Policy for Human Rights Defenders and the action envisaged under that policy to protect defenders of indigenous peoples' rights.***

*Article 6. Appropriate consultation procedures.* The Committee recalls that it has been raising the question of adopting appropriate consultation procedures in its comments for a number of years. In its previous observation, the Committee noted the existence of two Bills before Congress on consultations with indigenous peoples, but at the same time noted that the Government had not provided information on how indigenous peoples had been consulted regarding the Bills. The Committee also noted the related rulings of the Constitutional Court on the need for Congress to adopt legislation implementing consultation with indigenous peoples, as well as the social partners' concerns at the lack of a regulatory framework for such consultation, developed in consultation with the indigenous peoples. The Government indicates that since 2007 five Bills on consultation have come before Congress. The Committee observes that the Government has not provided information on the current situation with regard to those Bills, nor on the consultation processes with indigenous peoples on their content. The Committee notes that the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala indicate that indigenous organizations rejected the consultation Bills, and that an attempt had been made to take the mere presence of indigenous peoples at the events organized by the Ministry of Labour and Social Welfare as signalling their support for the Bills. The Committee also notes from its observations that the CACIF recognizes the efforts made by the Executive to promote a procedure that would give legal certainty to the process of prior consultation. Nevertheless, the Committee reiterates its concern at the absence of an established procedure on the right to consultation, a situation which has led to contradictory legal rulings. In reply, the Government indicates that the Congressional Labour Committee convened the representative organizations of indigenous peoples and interested bodies to a public hearing in October 2019 to disseminate and discuss the content of a consultation Bill. The Committee notes, from the Government's reply to the trade union's observations, that the convocation was for a one-day hearing, it was written only in Spanish and restricted participation by indigenous peoples to two persons per organization. In the supplementary information provided in 2020, the Government provides a copy of the above-mentioned Bill submitted to the Legislative Steering Committee of Congress on 22 October 2019. The CACIF, in its 2020 observations, refers to the advisory opinion issued by the Constitutional Court in July 2020, in which it reiterates that the consultation procedure must be regulated by the Congress of the Republic through a legal provision, and emphasizes the importance of adopting legislation containing the necessary provisions to establish a consultation procedure in the country.

The Committee recalls that it is important for governments to establish, as a matter of priority and with the participation of the indigenous and tribal peoples, appropriate procedures for consulting the representative organizations of these peoples. In this regard, it reiterates the importance of holding prior

consultations with the indigenous peoples before establishing those procedures (see General observations of 2010 and 2018). It also recalls that the consultations must be formal, full and aimed at producing genuine dialogue between governments and indigenous peoples, for which sufficient time must be given to these peoples to organize their own decision-making processes and to participate effectively in the decisions adopted. ***Based on these criteria and the information provided by the Government and the social partners, the Committee once again urges the Government to institute a consultation process with indigenous peoples with a view to discussing and subsequently adopting an appropriate consultation procedure with indigenous peoples, and requests the Government to provide information in that regard. The Committee encourages all interested parties to make every effort to participate in good faith in the process, with the aim of engaging in constructive dialogue that will lead to positive results. The Committee reiterates its request for information on the consultation processes engaged with the indigenous peoples, the methods employed, the entity directing the processes and the framework supporting them.***

*Article 14. Lands.* In its previous comments, the Committee noted that the information provided by the Government on the implementation of the Programme for the regularization and allocation of State land showed no progress in terms of identifying and registering the communal lands of the peoples covered by the Convention. The Committee requested the Government to adopt measures without delay to protect the land rights of the indigenous peoples, and to provide information on the areas of lands titled, together with information on the application in practice of the national regulations on communal lands. The Government indicates that under the specific Regulation for the recognition and declaration of communal lands of 2009, the Cadastral Information Registry (RIC) had visited the communities to disseminate the Regulation and had conducted initial surveys of the communal lands. The Committee notes that the regulation cited establishes the requirement of consultation with the indigenous communities prior to cadastral survey in respect of lands the property of, in possession or tenure of, those communities. Between 2005 and 2019, the RIC carried out 36 surveys in the same number of communities where the lands could potentially be declared communal, and 11 communities have been thus recognized. In the written information submitted in 2019 to the Committee on the Application of Standards, the Government indicated that, given the socio-cultural characteristics of the country, the process for the recognition and declaration of lands as communal is slow. ***The Committee urges the Government to intensify its efforts in adopting the measures necessary to accelerate the process of identification, titling and registration of the lands that the indigenous peoples have traditionally occupied. In that regard, the Committee requests the Government to provide detailed information on progress made and the difficulties arising in those processes, and also on the manner in which indigenous peoples participate in their implementation.***

In its previous comments, the Committee noted that the Secretariat for Agrarian Affairs had made efforts to facilitate the settlement of agrarian disputes, and requested the Government to provide information on resolved and pending conflicts. The Government replies that between 2015 and 2019, the Secretariat for Agrarian Matters dealt with a total of 1,484 cases, involving 2,149 persons belonging to different ethnic communities. It also informs the Committee that the Presidential Dialogue Commission, within which different Government entities and civil society groups interact, has taken up ten cases related to land and natural resources conflicts. The Committee notes that the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala indicate the persistent lack of protection of the collective property of indigenous peoples. Moreover, it further notes that CERD, in its 2019 concluding observations regarding Guatemala, refers to reports that indigenous peoples have been forcibly evicted from their territories without appropriate legal protection and, in some cases, through the use of excessive force (CERD/C/GTM/CO/16-17). ***The Committee urges the Government to take the appropriate measures to investigate the cases of eviction involving indigenous communities and to ensure that those communities have adequate means of defending their rights. The Committee requests the Government to continue providing information on the number of land conflicts dealt with and resolved through the efforts of the Secretariat for Agrarian Matters and the Presidential Dialogue Commission, giving examples of agreements reached.***

*Articles 6 and 15. Consultation, natural resources. Sacatepéquez cement plant.* Since 2011, the Committee has been noting the conflict in San Juan Sacatepéquez related to the project to construct a cement plant and the Government's attempts to promote dialogue between the enterprise mounting the project and the indigenous communities. In its last comments, the Committee requested the Government to provide information on the Peace and Development Framework Agreement signed between the San Juan Sacatepéquez municipality, the Government and 12 indigenous communities under which it was agreed to foster a climate of trust, seek out-of-court solutions to criminal proceedings, and aim to provide special assistance for victims of the cement plant construction. In that regard, the Government replies that in 2017 and 2018 the Presidential Dialogue Commission had approached the actors interested in transforming the conflict and letters of understanding had been signed, reaffirming cooperation between the communities, the Cementos Progreso Company, responsible for the cement plant, and the municipality of San Juan Sacatepéquez. It indicates that the enterprise, in coordination with the

municipality, continues to undertake projects that are beneficial to the communities of Asunción Chivoc y Cruz Blanca, las Trojes 1, Santa Fe Ocaña, and Pajoques y Pilar 1. The Committee duly notes the Government's indication that dialogue has been hampered by demonstrations led by mayors and community leaders against the regional ring road projected by the cement company in San Antonio Las Trojes. It notes from the observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala that conflict and violence persist between those in favour and those against the projects of the Cementos Progresos enterprise; and that some members of the San Juan Sacatepéquez communities, who had engaged in passive resistance, have been victims of human rights violations. The Committee, while taking due note of the Government's reaffirmed commitment to implement an immediate action plan answering to the communities' concerns with participation, compromise and a role for the communities and their representatives, observes that some indigenous communities are still in conflict with the local government regarding the San Juan Sacatepéquez cement plant project. ***The Committee therefore encourages the Government to continue taking all necessary measures to restore the climate of trust and dialogue between the local government, the enterprise and all the communities affected by the project. The Committee requests the Government to provide specific information on progress in fulfilling the Peace and Development Framework Agreement, and the ways in which the indigenous communities concerned have been involved in its implementation. It also requests the Government to provide information on the measures taken to investigate the allegations regarding violations of the rights of members of indigenous communities communicated by the trade unions.***

*Review of mining legislation.* In its previous comments, the Committee reminded the Government of the need to take steps to bring the mining legislation into line with the Convention's requirements of consultation and participation. The Committee notes that the Ministry of Energy and Mines has set up a Revision Committee to draft reforms of the Mining Act with a view to including the content of *Articles 6* and *15* of the Convention. It notes that six reform initiatives of that Act are currently before Congress, together with a number of Constitutional Court rulings setting forth consultations with the communities affected by the mining projects. In its observations, the CACIF stresses the innumerable economic losses, including the loss of jobs, brought about by the suspension of the mining projects in the absence of a clear consultation process. The Autonomous Popular Trade Union Movement and the Global Unions of Guatemala indicate that the Government has not complied with the order to hold consultations issued by the Constitutional Court in respect of various mining projects, and that the territories inhabited by the indigenous peoples continue to be laid open for extractive projects, with no participation by the communities affected. In that connection, the Government replies that in the absence of legislation on consultation in the country, the Constitutional Court's guidelines have been followed, and that the Ministry of Energy and Mining has ensured the establishment of forums for the inclusion and participation of indigenous representatives in areas where they can influence the projects.

The Committee notes with ***concern*** the ongoing lack of a mechanism for clear and systematic consultations with the indigenous peoples applicable to the natural resources extraction projects in their territories, resulting in a number of judicial rulings of non-compliance with the obligation to consult. ***In this regard, the Committee once again urges the Government to take all measures necessary to ensure that the mining legislation is in accordance with Articles 6 and 15 of the Convention and that appropriate consultation procedures with the indigenous peoples are in place, designed in consultation with the peoples in question, in coordination with all institutions concerned, and aimed at establishing a climate of trust and legal certainty. The Committee emphasizes that the establishment of effective consultation procedures helps to prevent and resolve conflicts through dialogue, and reduces social tension.***

***The Committee hopes that the technical assistance that the Office has been providing the Government for the implementation of Convention No. 169 will help to address the matters raised in its comments and promote the full application of the Convention, and particularly the rights of the indigenous peoples enshrined therein.***

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

## Honduras

### Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1995)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the Honduran National Business Council (COHEP) received in 2018, in September 2019 and on 1 October 2020. The Committee notes that the International Organisation of Employers (IOE) supported the 2018 observations of the COHEP and, in September 2019, sent General observations on the application of the Convention. The Committee notes the Government's replies in this regard. The Committee also notes the observations of the General Confederation of Workers

(CGT) and the Workers' Confederation of Honduras (CTH), received on 5 October 2020, and the Government's reply to those received on 30 October 2020.

### *Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)*

*Article 3 of the Convention. Human rights.* In its previous comments, the Committee noted with deep concern, as did the Conference Committee in its conclusions of 2016, the information regarding murders, threats and violence against representatives and defenders of the rights of indigenous peoples, as well as the climate of impunity. The Government was firmly urged to take the necessary measures to provide adequate protections for members of indigenous communities and their representatives against any acts of violence or threats, to investigate the reported murders and acts of violence and provide information in that respect.

In its report, the Government refers in general terms to the security and protection measures taken by the General Directorate of the Protection System (DGSP) in relation to several indigenous and rural communities, including police measures and measures for the installation of infrastructure and technology for human rights defenders in their own communities. The Government also refers to the adoption of preventive measures in the form of training for local authorities and awareness-raising activities on the importance of the work of defenders of indigenous peoples. In this respect, the Committee notes that, among the special prosecutors, in 2018, the Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Media Representatives and Justice Officials was established.

The Committee notes with ***regret*** that the Government has not provided more detailed information on the specific measures adopted in relation to the investigations conducted and the legal proceedings in process concerning the acts of violence, including murder, against representatives and defenders of indigenous peoples. In this respect, the Committee notes in relation to the murder of Ms Berta Cáceres (former president of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH)), to which it referred in its previous observation, that, according to information from the judicial authorities and the Public Prosecutor's Office, on 29 November 2018, the First Chamber of the Trial Court with national jurisdiction found guilty seven citizens as co-perpetrators of the murder. The Committee also notes that, in December 2019, the Special Prosecutor for Crimes against Life requested that a case be opened against a citizen accused of instigating the murder of Ms Berta Cáceres.

The Committee notes that, in his 2019 report, the Special Rapporteur on the situation of human rights defenders in Honduras recognizes persons defending the rights of indigenous peoples as one of the specific groups of human rights defenders who are at risk. The Rapporteur notes that the threats made against indigenous peoples are essentially linked to their efforts to defend their land and natural resources, fight racism and discrimination and claim their economic, social and cultural rights and their right to access to justice. He indicates that indigenous activists of the Lenca, Maya, Tolupán, Garifuna, Nahua, Pech Tawahka and Misquito peoples frequently face death, prosecution, stigmatization, judicial harassment and discrimination for fighting for the rights of their peoples and observes that, "The vast majority of murders and attacks targeting rights defenders go unpunished; if investigations are launched at all, they are inconclusive." (A/HRC/40/60/Add.2).

In its supplementary information provided in 2020, the Government indicates that the DGSP has improved the Matrix for the evaluation of collective and individual risks and the identification of risks through constant monitoring. Through the Matrix, the characteristics of the population are determined and technical safety schemes implemented. The Prevention and Contextual Analysis Unit (UPAC), which forms part of the National Prevention Mechanism, has also developed four prevention plans which analyse the situation and set out prevention measures for certain indigenous communities, including the Lenca community in the Department of La Paz, the Tolupán people of Montana de la Flor in the Department of Francisco Morazán and the Garifuna communities of the Department of Cortés. The Government adds that between 2017 and 2018, the Office of the Public Prosecutor received 18 complaints of crimes against the life of members of indigenous and Afro-Honduran peoples, following which judicial action was taken in six cases, with six convictions. A total of 45 complaints were also received of threats, leading to judicial action in two cases and two convictions. The Government further reports that, as a consequence of the violent deaths of members of indigenous and Afro-Honduran peoples (a murder in Warunta, in the municipality of Ahuas, Department of Gracias a Dios, and multiple murders in the community of Santo Tomás, Gualcinse, Department of Lempira), as well as threats against members of the Lenca people in La Iguala, Department of Lempira, and in the Department of La Paz, the Special Prosecutor for ethnic matters and cultural heritage has called for the implementation of protection measures.

With reference to the seven persons found guilty of the murder of Bertha Cáceres, the Government indicates that four of them were sentenced to imprisonment for 50 years and the other three for 30 years. The trial of the person accused of instigating the crime (the former Executive President of Desarrollos Energéticos SA (DESA)) is still pending.

The Committee takes due note of this information on the initiatives to provide protection to the members of indigenous and Afro-Honduran peoples who are the victims of threats. ***In this regard, the Committee requests the Government to provide information on the protection measures adopted at the request of the Special Prosecutor for ethnic matters and cultural heritage as a consequence of the violent deaths and threats against members of indigenous and Afro-Honduran peoples, with an indication of the types of measures and the persons benefiting.***

***The Committee urges the Government to continue taking the necessary measures to foster a climate free from violence in which the physical safety and psychological well-being of members of indigenous communities and their representatives are sufficiently protected, and the full and effective exercise of their human and collective rights is guaranteed, as well as their access to justice. While noting and welcoming the conviction of the perpetrators of the murder of Ms Berta Cáceres, the Committee urges the Government to take the appropriate measures to ensure that the instigators are held accountable and penalized. The Committee requests the Government to continue providing detailed information on the other complaints of acts of violence and threats against indigenous peoples and Afro-Hondurans and their representatives in the context of claiming their economic, social and cultural rights; as well as the investigations and proceedings initiated***.

*Articles 6 and 7. Appropriate consultation and participation procedures.* The Committee recalls that, along with the Conference Committee in 2016, it urged the Government to take the necessary steps to establish appropriate consultation and participation procedures in accordance with the Convention and ensure that peoples covered by the Convention are consulted and are able to participate in an appropriate manner in the formulation of such procedures. The Committee noted that, between May and October 2016, workshops were held with the nine indigenous and Afro-Honduran peoples for dialogue on a preliminary draft Bill on prior, free and informed consultation with indigenous peoples and that the process was marked by the absence of representative organizations, such as the Fraternal Afro-Honduran Organization (OFRANEH) and the COPINH.

In its 2019 report, the Government indicates that, following the consultation process on the draft Bill, a national workshop was organized with the participation of the organizations of the populations concerned, which submitted a draft with the contributions of eight of the nine indigenous and Afro-Honduran peoples (the Lenca peoples withdrew from the process). The OFRANEH and the COPINH also did not participate in the dialogue. The Government indicates that, since that time, it has remained open to any organization that wishes to express its opinion on the revised draft Bill on consultation and adds that, on 14 July 2018, it also held a meeting with the Confederation of Indigenous Peoples of Honduras (CONPAH), which brings together all the indigenous and Afro-Honduran peoples. At that meeting, it was reported that the Government had referred the draft Bill to the National Congress, which subsequently established a Special Advisory Committee on the Consultation Act. The Government also reports that it has benefited from the technical comments of the International Labour Office.

In the supplementary information provided in 2020, the Government reports on the action taken during the state of emergency (declared on 16 March 2020) to disseminate the precise and detailed content of the Bill to the sectors involved, obtain technical opinions and seek cooperation in the process of its dissemination, consultation and adoption. The Government indicates that a map of indigenous and Afro-Honduran institutions is being prepared to be ready when the process of consultation commences for the adoption of the Bill. The Government observes that the state of emergency has involved restrictions on freedom of movement and the right of assembly, as a result of which it is not possible to begin a consultation process with all indigenous and Afro-Honduran peoples. While outreach meetings have been held through video conferences with certain representatives of indigenous peoples, not everyone could participate. The Government also provides information on the consultation processes undertaken by the State: the consultation process with the Miskito Territorial Council of DIUNAT on the implementation of Solar Power Project 90 and with the Miskito Territorial Councils on the oil extraction project on the Miskito coast.

The Committee notes that, in its 2019 observations, the COHEP reiterates its support for the adoption of an Act on prior, free and informed consultation, developed in accordance with the Convention and following dialogue with all the social partners. In its supplementary observations of 2020, the COHEP indicates that in February 2020 it participated in a meeting with the Legislative Steering Committee of the National Congress, where it was able to express its position concerning the Bill, and indicated in particular that the Act should only regulate matters related to the Convention; that consultation is not binding, as the final decision lies with the State; and that if the Act is not adopted, there would be no foreign or national investment in projects involving the development of communities due to the legal insecurity resulting from the legislative void. The COHEP adds that it has requested the Government to consult the representatives of the most representative organizations of workers and employers. Furthermore, in response to the 2020 observations of the CGT and the CTH indicating that there has been no discussion of the subject of the Convention in the Economic and Social Council (CES), the Government indicates that, within the framework of the CES, a Technical Tripartite Committee was established to discuss the Bill on

prior, free and informed consultation, in which only the employers and the Government provided credentials for their representations. The Government adds that working meetings were held to analyse, discuss and draw up the Bill before its referral to the National Congress.

***The Committee takes due note of the information provided and encourages the Government to continue taking the necessary measures with a view to the establishment of appropriate procedures for consultation with peoples covered by the Convention on any legislative or administrative measures likely to affect them, in accordance with the Convention. In this respect, the Committee considers it of the utmost importance that the Act adopted is the result of a process of full, free and informed consent with all the indigenous and Afro-Honduran peoples and therefore urges the Government to take the necessary measures to ensure that indigenous peoples are consulted and are able to participate in an appropriate manner through their representative bodies in the formulation of these procedures, so that they can express their opinions and influence the final outcome of the process. Until the adoption of the Act, the Committee once again requests the Government to continue providing detailed information on the consultation processes held in relation to measures that directly affect indigenous peoples.***

*Articles 20, 24, and 25. Protection of the rights of the Misquito people.* In its previous comments, the Committee requested the Government to continue providing information on the impact of the measures adopted to improve the protection and conditions of work of Misquito dive-fishers and on the possibility of regulating dive-fishing. The Government indicates that is has been developing comprehensive compensation actions that go beyond the individual compensation of those affected by dive-fishing and aim to benefit the entire Misquito community. These compensation procedures are developed in collaboration with the victims (divers with disabilities) and the representative organizations of the Honduran Misquito population so as to guide the State in the implementation of projects that genuinely meet their needs. In relation to measures adopted in the field of health, the Government refers to: a cooperation agreement to provide comprehensive health services to the population engaged in dive-fishing activities with priority given to divers suffering from decompression sickness; a project to establish a centre for hyperbaric and diving medicine to provide preventive, therapeutic and rehabilitative medical care to divers with sequelae; and the commissioning of a water ambulance. The Government also indicates that: 33 scholarships for primary, secondary and university education have been granted to the children of divers with disabilities or deceased divers (148 scholarships for boys, girls and young persons and scholarships for higher education for 500 young persons between 2016 and 2019); a project for the construction of social housing is being carried out in various municipalities of the Gracias a Dios department; a fund has been established for the execution of different productive projects, in consultation with the Misquito population; and a total of 177 labour inspections have been carried out on dive-fishing boats which led to the reduction of occupational risks and improved productivity.

The Committee notes that the United Nations Committee on the Elimination of Racial Discrimination, in its concluding observations of 2019, expressed concern regarding the situation of Misquito divers, who continue to be the victims of precarious working conditions, without adequate occupational safety measures, and the increase in the number of divers who are victims of accidents due to underwater fishing (CERD/C/HND/CO/6-8). The Committee also notes that, during its visit to the Mosquitia region, the Inter-American Commission on Human Rights (IACHR) observed concerning scenes of poverty, unemployment, a lack of health and energy services and a dearth of water sources and sanitation.

The Committee welcomes the comprehensive approach adopted by the Government in relation to the situation of Misquito divers, which seeks to grant comprehensive compensation to the victims of dive-fishing and improve the living and working conditions of the members of the Misquito community. ***The Committee encourages the Government to continue taking special measures in this respect, indicating the results achieved and the challenges that remain in improving the working conditions of Misquito divers, the inspection of those conditions and the living conditions of the Misquito population. Please indicate the manner in which the members of the Misquito population participate in the formulation, application and evaluation of such measures.***

The Committee is raising other matters in a request addressed directly to the Government, which reiterates the content of its previous request adopted in 2019.

## India

### Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1958)

*Articles 2 to 5 of the Convention. Protection of the Dongria Kondh*. In its previous observation, the Committee requested the Government to provide more specific information on the implementation of the Conservation-cum-Development plan by the state government of Odisha, which covers 13 particularly vulnerable tribal groups, including the Dongria Kondh, and on the steps taken to give effect to the orders issued by the Supreme Court of India in its judgment of 18 April 2013 on the protection of the religious rights of the scheduled tribes and other traditional forest dwellers in the Niyamgiri Hills. The Committee

notes that, in its report, the Government states that it awaits information from the state government of Odisha in response to the questions raised by the Committee. The Committee recalls that, in the past, it referred to the situation of the Dongria Kondh people in relation to a bauxite mining project to be developed in the lands traditionally occupied by them, and noted with interest the Supreme Court of India's judgment of 18 April 2013, which provided certain directions to the state Government and the Ministry of Tribal Affairs for compliance in the context of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. ***The Committee requests the Government to ensure that the rights and interests of the Dongria Kondh and the other particularly vulnerable tribal groups are fully respected and guaranteed, and to provide information on the measures taken in this regard. It also requests the Government to provide information on the implementation of the Conservation-cum-Development Plan prepared by the state government of Odisha and on the measures taken to give effect to the orders issued by the Supreme Court of India in its judgment of 18 April 2013 on the protection of the religious rights of the scheduled tribes and other traditional forest dwellers in the Niyamgiri Hills. The Committee also requests the Government to indicate the steps taken to ensure that the communities concerned are involved in the design and implementation of such measures. The Committee further refers to the point below on the implementation of the Recognition of Forest Rights Act, 2006.***

*Articles 11 to 13. Land rights*. In its previous observation, the Committee requested the Government to continue providing information on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. The Committee notes the Government's indication that, according to the monthly progress report prepared by the Ministry of Tribal Affairs on the basis of the information received from the state governments, 4,196,880 claims (4,052,702individual and 144,178 community claims) were filed and 1,859,595 titles (1,789,670 individual and 69,925 community claims) were issued, as of 31 March 2018. The Committee further notes from the latest monthly report available from the website of the Ministry of Tribal Affairs, dated 12 March 2020 and covering the period ending on 30 November 2019, that 4,241,135 claims (4,092,183 individual and 148,952 community claims) were filed and 1,977,097 titles (1,900,923 individual and 76,174 community claims) were distributed. It also notes from the annual report 2019-2020 of the Ministry of Tribal Affairs that the Ministry aims to accelerate the implementation of the Recognition of Forest Rights Act, 2006, including by ensuring wider publicity and dissemination of information about the Act to the intended beneficiaries.

The Committee notes that on 13 February 2019, the Supreme Court of India, in its judgment on the matter of *Wildlife First & Others v. Ministry of Environment, Forest and Climate Change & Others* (Writ Petition No. 109/2008), directed state governments to evict the persons/parties whose claims under the Recognition of Forest Rights Act, 2006, were rejected. The Committee notes that 21 states are concerned, namely: Andhra Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Rajasthan, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh and West Bengal. The Committee notes that, according to the annual Report 2019–2020 of the Ministry of Tribal Affairs, the said Ministry filed an application before the Supreme Court on 26 February 2019 asking the Court to consider modifying its order of 13 February to direct the state governments to file detailed affidavits regarding the procedure followed and the rejection of the claims, and to withhold until then the eviction of the concerned communities. The Committee notes that, on 28 February 2019, the Supreme Court stayed its order of evictions based on the consideration that the state governments had not provided sufficient information on how the decisions on the claims were made, and therefore directed all States to submit an affidavit by 12 July 2019, in which they should provide information on the procedure adopted for rejecting the claims; which competent authority rejected the claims; and under which provision of law the evictions orders were made. The Court also asked states to clarify whether the process established by the Recognition of Forest Rights Act, 2006 was respected, in particular as regards the role of the *Gram Sabhas* (village assemblies), and to indicate the process to be followed for eviction after the rejection orders were passed. The Committee notes that in July 2019 the stay on evictions was further extended.

The Committee notes with ***concern*** that an estimated 9 million forest dwellers would be affected by the eviction orders (A/74/183, 17 July 2019, paragraph 34). The Committee notes that concerns about the failure to ensure adequate implementation of the Recognition of Forest Rights Act, 2006 have been raised on various occasions by United Nations mandate holders, particularly with regard to the transparency of the process, the consent before displacement or eviction, and the provision of adequate redress and compensation (UA IND 13/2019, 19 June 2019; IND 9/2017, 24 August 2017; IND 9/2013, 8 July 2013, among others). The Committee also notes from the mission report of the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, that a disproportionate number of displacements, in connection with projects of various kinds, appear to involve persons belonging to scheduled tribes (A/HRC/34/51/Add.1, 10 January 2017, paragraph 48). The Committee further notes that concerns have been raised over allegations of violence, harassment, intimidation and arbitrary arrests of people belonging to the concerned communities who sought to exercise their rights (UA IND 1/2018, 30 January

2018; IND 1/2019, 16 January 2019, among others). The Committee recalls that according to *Article 12(2)* and *(3)* of the Convention the peoples concerned shall not be removed from their territories without their free consent and that, if relocation takes place, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development, or, if they express preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

***In light of the above, the Committee requests the Government to: (i) supply information on any developments concerning the Supreme Court's order of 13 February 2019; and (ii) take the necessary measures to ensure that the rights to land of scheduled tribes and other traditional forest dwellers are fully recognized and protected, and the role and functions of the Gram Sabha, as spelt out also in the Recognition of Forest Rights Act, 2006, are fully respected, and provide information in this respect, including on any grievance filed against decisions made under the Recognition of Forest Rights Act, 2006, and of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. Please also provide information on the status of recognition of scheduled tribes' land rights falling outside the scope of application of the Recognition of Forest Rights Act, 2006.***

*Articles 5 and 11 to 13. Draft National Forest policy.* The Committee notes that on 14 March 2018, the Ministry of Environment, Forest and Climate Change released the draft National Forest policy, 2018, for public comments and that, to date, revisions to the existing policy are still under discussion. ***The Committee requests the Government to ensure that scheduled tribes and other traditional forest dwellers are involved in the formulation of the new National Forest policy and that the rights under the Convention are fully recognized in the new policy. It also requests the Government to provide information on any measures taken in this respect and on any developments concerning the adoption of the Forest policy.***

*The Sardar Sarovar dam project*. The Committee previously noted the Government's indication that updated information concerning the resettlement of the remaining 260 families affected by the Sardar Sarovar dam still needed to be provided by the State of Gujarat. The Committee requested the Government to provide updated information on the measures adopted for the resettlement of all families affected by the Sardar Sarovar dam in the state of Madhya Pradesh and other states concerned. The Committee notes the information provided by the Government on the progress made, as of June 2018, on the resettlement and rehabilitation of the families affected by the project in the state of Gujarat. The Committee also notes that the Sardar Sarovar dam has recently been expanded. It notes from communications made by United Nations mandate holders that the expansion may have resulted in the forced eviction and displacement of 40,000 families (Joint Urgent Appeal – JUA IND 8/2017, 29 August 2017). According to the same source, "it is alleged that the status of rehabilitation has been too slow; farmers have been mostly promised barren and non-cultivable lands or meagre cash compensation, and resettlement sites are not in a state of habitation, lacking infrastructure, such as sewage and water pipes, as well as lacking schools, access to health centres and access to other basic rights". ***Referring to the standards governing relocation under the Convention, which have been recalled above, the Committee requests the Government to take all necessary measures to ensure that persons belonging to the tribal population displaced by the expansion of the Sardar Sarovar dam project are provided with resettlement and compensation in conformity with Article 12(2) and (3) of the Convention. The Committee requests the Government to provide information on the measures adopted in this regard and the progress made towards resettlement and compensation. Please also indicate the overall status of progress in the resettlement and rehabilitation of the families affected by the project, specifying the number of families belonging to the tribal population that still remain to be settled and the measures taken concerning them.***

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

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 107** *(Ghana, Guinea-Bissau, India, Syrian Arab Republic);* **Convention No. 169** *(Brazil, Dominica, Guatemala, Honduras).*

# Specific categories of workers

## Argentina

### Home Work Convention, 1996 (No. 177) (ratification: 2006)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the Confederation of Workers of Argentina (CTA Autonomous) and the Industrial Confederation of Argentina (UIA) received on 30 September and 1 October 2020, respectively. ***The Committee requests the Government to send its reply in this regard.***

*Promotion of telework.* The Committee notes the adoption on 16 March 2020 of Decision 2020-207-APN-MT, which promotes telework for national public sector workers, except for essential service workers, and recommends that private enterprises operate at a minimum staffing level and adopt telework. On 16 March 2020, Decision No. 21/20 was also adopted, which provides that employers allowing employees to work from their private homes must inform their occupational risk insurer (ART) of the address where the work will be performed and the frequency of that work. That address will then be considered as a workplace under the Occupational Risk Act. In addition, the Committee notes the supplementary information provided by the Government. In particular, it notes with ***interest*** the adoption of Act No. 27555 of 30 July 2020 (hereinafter Act No. 27555) regulating telework. Section 2 of Act No. 27555 provides that contracts are considered as telework contracts "where the completion of activities, performance of work or provision of services … is carried out entirely or partially in the home of the worker, or in locations separate from the premises of the employer, through the use of information technologies." Section 2 also provides that the minimum legal requirements for telework contracts shall be established by a special law, while activity-specific regulations shall be established through collective bargaining. The Committee also notes that Act No. 27555 provides that workers on a home work contract have the same rights and obligations as those working on site (section 3), including the rights to freedom of association and collective bargaining (sections 12 and 13) and protection from occupational risks (section 14). Section 3 also provides that the wages of workers engaged in telework must not be less than what they would receive for on-site work. Section 4 provides that working hours must be agreed in advance and in writing, in accordance with the legally established limits. Act No. 27555 also regulates the right to digitally disconnect (section 5), the option to amend working hours to provide care in certain cases (section 6) and the right to receive training (section 11). The Act also establishes a number of obligations for employers, such as the obligation to provide the equipment, tools and support necessary to perform the work, and to reimburse any connectivity and/or service consumption costs that workers might incur as a result of teleworking (sections 9 and 10). Lastly, Act No. 27555 provides that the transfer of workers from on-site work to telework must be voluntary and agreed in writing (section 7), and can be revoked by the worker at any time (section 8).

The Committee notes that, in its observations, the CTA emphasizes that, while Act No. 27555 includes the rights and obligations established in the Convention and in the Home Work Recommendation, 1996 (No. 184), the effective exercise of these rights is problematic in practice, since they depend on collective bargaining conducted at a later stage. In addition, the CTA maintains that the effective enforcement of the obligations is subject to subsequent regulation by the competent state bodies. Moreover, the CTA indicates that the Act considers telework as a new employment contract (section 2) and not as an arrangement or option available to the employer for organizing work under the Employment Contracts Act (Act No. 20.744). The CTA also states that including the option of working by objectives (section 4(1) of the Act) renders the right of the worker to limit working hours (section 4(2)) and to disconnect (section 5) null and void in practice. With regard to occupational safety and health, the CTA maintains that section 14 of Act No. 27555 undermines the protection of workers, as it provides that accidents that occur at work are "presumed" to be occupational, while the Occupational Risks and Accidents Act (No. 24557) currently in force provides that such accidents are "deemed" to be occupational. The Committee also notes the CTA's indication that Act No. 27555 expressly provides for its entry into force 90 days from the eventual end date of the social, preventive and obligatory isolation period established by Emergency Decree No. 297/2020 currently in force, and that, consequently, it is impossible to determine when the Act will enter into force. The CTA emphasizes that, although the number of workers engaged in telework has increased exponentially during the pandemic, their working conditions are unknown. As the Act is not yet in force owing to the extension of the social, preventive and obligatory isolation period, employers have unilaterally established the parameters for teleworking, without any kind of public oversight. The CTA indicates that the only exception in this regard has been the signing of the "Agreement regulating telework under the COVID-19 (coronavirus) pandemic restrictions" between the judiciary of the province of Buenos Aires and the Judicial Association of Buenos Aires, which remains in force only during the social,

preventive and obligatory isolation period. The CTA also maintains that there is no register of workers engaged in telework either prior to or during the pandemic, contrary to the guidance provided by Paragraph 7 of Recommendation No. 184.

The Committee notes the UIA's statement that the brevity of the legislative process by which Act No. 27555 was adopted did not allow for an effective social dialogue process to be held. The UIA indicates that, in the discussions held during the adoption process, the employer organizations expressed deep concern over various provisions of the Act that were difficult to apply in practice and that, moreover, were contrary to international labour standards. In this regard, the UIA indicates that Act No. 27555 does not establish an objective criterion for determining when remote work is considered as a contract performed under teleworking arrangements and when it is considered as work occasionally performed remotely, which is excluded from the regime of home work under the Convention. Furthermore, the UIA is opposed to the prohibition in Act No. 27555 against contacting workers outside of working hours (section 5(2) of the Act), and the obligation of the employer to have a system in place that prevents communication with workers outside of their working hours (section 4(2)). Lastly, the UIA refers to section 17(1) of Act No. 27555, which provides that in the case of transnational remote work, the national law applicable to the work contract is either that of the country where the work is performed or that of the country where the employer is domiciled, depending on which is more favourable to the worker. The UIA also refers to section 17(2) of the Act, which provides that collective agreements (concluded under section 2 of Act No. 27555) should establish a maximum number for these contracts. In this regard, it considers that cases in which Argentine law would not apply would contradict the territoriality principle established in the Employment Contracts Act (Act No. 20.744) and create a situation of legal uncertainty that could undermine compliance with international agreements. ***The Committee requests the Government to send detailed and updated information on the application in practice of Act No. 27555 of 30 July 2020, including the date of its entry into force, and updated statistical information on the number of workers that have begun to telework, disaggregated by age, sex and sector, and on the number of collective agreements concluded under section 2 of the Act. The Committee also requests the Government to send information on the manner in which the right to limit working hours and to disconnect is ensured. Recalling also that telework can be a useful means of enabling access to employment for individuals who sometimes face greater obstacles in this regard (such as young people, women, persons with disabilities and older people), the Committee requests the Government to provide information on the impact of Act No. 27555 on the employment of such individuals.***

## Cuba

### Plantations Convention, 1958 (No. 110) (ratification: 1958)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations formulated by the Independent Trade Union Association of Cuba (ASIC) of 28 August 2018. It also notes the Government's response to those, received on 22 November 2018, and reproduced in the supplementary report received this year.

*Part IV. Wages. Articles 24 to 35.* In its previous comments, the Committee requested the Government to indicate the manner in which effect is given to these provisions of the Convention, which contemplate the establishment of procedures and mechanisms to fix and ensure minimum wages for plantation workers. The Committee notes the Government's indication that in Cuba the minimum wage is fixed by legal provision, and is established in line with the level of economic and social development, further to the opinion of the corresponding organizations. The Government refers, inter alia, to section 109 of the Labour Code, promulgated through Act No. 116 of 20 December 2013, which establishes the elements constituting the wage. In addition, the Government refers to section 126 of the Labour Code Regulations, promulgated through Decree No. 326 of 12 June 2014, which, when read together with section 113 of the Labour Code, establishes the wage system and provides that the minimum wage must correspond with the wage of the first degree of labour complexity on the wage scale. The Government also refers to various payment methods available, such as pay for performance, which aims to increase labour productivity, and pay for time, where the wage is paid in accordance with the time worked. The Government adds that, according to the National Statistics and Information Office, in 2017 the average monthly wage in State bodies in agricultural, farming and forestry activities was 834 pesos. The Committee recalls its previous comments on the Minimum Wage Fixing Convention, 1970 (No. 131), in which it noted that that *Article 4(2)* of that Convention provides for the consultation, in connection with the operation of the minimum wage-fixing machinery, of both the representative organizations of workers concerned and of employers or, where no such organizations exist, representatives of the workers and employers concerned. Likewise, *Article 24* of Convention No. 110 provides specifically for consultation with the social

partners in fixing the minimum wage in the plantations sector. ***The Committee requests the Government to provide detailed and updated information on the manner in which the representatives of the relevant workers' and employers' organizations were consulted in the context of the determination of the minimum wage, as required under Article 24 of the Convention. The Committee also requests the Government to provide information on the manner in which it is ensured that workers in the plantations sector receive at least the established minimum wage, including information on the number and outcomes of the inspections conducted relating to payment of the minimum wage in plantations.***

*Part V of the Convention (annual holidays with pay). Articles 36 to 42.* In its previous comments, the Committee noted that section 107 of the Labour Code, allows for the employer to require the presence of the worker in exceptional circumstances, and allows for the employer to postpone or reduce the worker's holidays and to pay him or her the reduced proportion of the accumulated holidays. In this respect, the Committee requested the Government to indicate the manner in which it is ensured that this section of the Labour Code gives full expression to *Article 41* of the Convention, which provides that any agreement to relinquish the right to an annual paid holiday or to forgo such a holiday, shall be void. The Committee notes the Government's indication that section 107 of the Labour Code sets forth that any postponement of holidays is exceptional as provided for in *Article 41* and is not systematic. Referring to the emergence of "exceptional" circumstances, the Government indicates that this does not imply a regular occurrence, but only those circumstances that directly or decisively affect the performance of a task assigned to the worker that cannot be postponed. The Government adds that the law stipulates that upon expiry of the cumulated holiday period, enjoyment of the holiday can be postponed, which does not mean that the accumulated holidays will not be granted. The Government also indicates that, if it is agreed to simultaneously pay the accumulated holidays and the wages for the work performed, guaranteeing an effective period of leave of at least seven days in the year, this does not exclude longer periods being granted during the year. ***The Committee reiterates that Article 41 of the Convention provides that any agreement to relinquish the right to an annual paid holiday or to forgo such a holiday, shall be void. It therefore requests the Government to take the necessary measures to give full effect to Article 41 of the Convention.***

*Parts IX and X (right to organize and collective bargaining –freedom of association). Articles 54 to 70.* In its previous comments, the Committee requested the Government to provide information on the measures adopted or envisaged to ensure that workers in plantations do not suffer discrimination or prejudice in their employment for having peacefully exercised the right to strike, as well as information on the exercise of this right in practice**.** It also requested the Government to provide statistical data on the number of collective agreements concluded in plantations, with an indication of the sectors of activity and the numbers of workers covered. In its reply, the Government indicates that the agricultural sector includes: (i) the National Association of Small Farmers (ANAP), which is the grass-roots association for members of cooperatives, farmers and their families; and (ii) the Cuban Association of Agricultural and Forestry Technicians (ACTAF), which comprises forestry and livestock technicians and professionals. The Government also indicates that there is no law or legal provision in the country prohibiting the right to strike. It adds that, while there is no legal text regulating the right to strike, provisions are in place protecting the right to equality at work without discrimination whatsoever. Lastly, the Committee notes the statistical data provided by the Government, which indicates that, in 2018, the number of state sector workers who were affiliated with the agricultural, forestry and tobacco workers' trade union stood at 307,469 and the number of non-state workers affiliated was 17,122. The Committee also notes that a total of 273,867 workers are protected by collective work agreements and that 7,159 collective agreements are in force, covering more than 2,800,000 workers. ***The Committee requests the Government to provide information on the measures adopted or envisaged to ensure in practice that plantation workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment. It also requests the Government to continue providing statistical information on the number of collective agreements concluded in the area of plantations, indicating the number of workers covered.***

*Part XI (labour inspection). Articles 71 to 84.* In its previous comments, the Committee noted the observations of ASIC, in which it denounced alleged cases of prisoners subjected to forced labour in plantations, and cases of child labour during school holidays. ASIC also denounced the employment of secondary school students in state farms during the harvest period, who are not paid for their work, but receive academic credits and a favourable recommendation for entry into university. The Committee notes the Government's reply to ASIC's observations. The Government indicates that the National Inspection Office has not identified any cases of forced labour in agriculture and that the Public Welfare Office at the Ministry of Labour and Social Security has not received complaints or reports in this respect. With regard to work performed by prisoners, the Government indicates that such persons are not victims of forced labour, since their involvement in work is essentially voluntary and, in addition, they enjoy the labour and social security rights established in the legal framework. The Committee notes, however, that the Government has not provided specific information on the number, age, and type and conditions of work of the prisoners and of the secondary school students who work in the plantations during the harvest period. Furthermore, the Government indicates that section 2(d) of the Labour Code sets out the prohibition of child labour and the special protection of young people between the ages of 15 and 18 who

enter the workforce, in order to ensure their full development. The Government adds that, within the framework of the basic secondary education system, there are plans to establish a foundation for the allocation of time for occupational training, aimed at developing values such as application, community and responsibility in students, and enabling the provision of activities of the vocational training and occupational guidance process. In this respect, the Committee requested the Government to provide detailed information on the number of prisoners and secondary school students who work in state farms, disaggregated by age and type of work. The Committee also requested the Government to indicate the manner in which they are compensated, as well as their conditions of work, and the manner in which it is ensured that the students have the freedom to choose whether or not to work. It also requested the Government to continue providing detailed information on the supervision and enforcement measures relating to the conditions of work of plantation workers. The Committee notes the statistical information provided by the Government on the number of labour inspections conducted in the agricultural sector and the violations identified during these inspections. In particular, the Government indicates that, in 2018, the National Labour Inspection Office conducted 141 inspections, in which it detected 898 violations, 347 of those relating to occupational safety and health. According to the Government, the principal violations detected consisted of the failure to guarantee safe and healthy conditions for workers and the violation of rules respecting the provision of personal protective equipment. ***The Committee therefore requests the Government to indicate the manner in which the Labour Inspectorate monitors and ensures that the activities of the vocational training and occupational guidance process in the plantations comply with Article 6 of the Minimum Age Convention, 1973 (No. 138). The Committee also once again requests the Government to provide detailed information on the number, age, type and conditions of work, compensation, and the manner in which it is ensured that the secondary school students and prisoners who work in the plantations have the freedom to choose whether or not to work. Lastly, the Committee requests the Government to continue providing detailed information on the supervision and enforcement measures relating to the conditions of work of plantation workers, particularly on the inspections conducted in the plantations, violations of the labour legislation identified and the penalties imposed.***

*Part IV of the report form. Application in practice.* The Committee notes that the Government has not provided information concerning the application in practice of the Convention. ***The Committee therefore reiterates its request to the Government to provide detailed and up-to-date information on the application of the Convention in practice, including: (i) recent studies on the socio-economic conditions of workers in plantations; (ii) statistical data, disaggregated by sex and age, on the number of plantations and workers to whom the Convention applies; (iii) copies of the collective agreements applicable in the sector; and (iv) the number of workers' and employers' organizations established in the plantations sector, and any other information which enables the Committee to assess the situation of workers in plantations in relation to the provisions of the Convention.***

***[The Government is asked to reply in full to the present comments in 2021.]***

## Greece

### Nursing Personnel Convention, 1977 (No. 149) (ratification: 1987)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee takes note of the observations of the Greek General Confederation of Labour (GSEE) received on 3 September 2019. ***The Committee requests the Government to provide its comments in this respect.***

*Article 2 of the Convention. Formulation and implementation of a nursing services and personnel policy. Nursing education and training.* The Committee recalls that, in its previous report, the Government had indicated that a national health strategy was being developed and that a bill concerning reform to primary health care had been submitted to the Parliament. The Government reports on a series of labour law provisions adopted since 2013, indicating that they apply to workers in dependent employment relationships in the private sector, including to nursing personnel. The Committee notes that amendments were introduced to Law No. 1579/1985 that define nursing specialties in Pathology, Surgery, Paediatrics and Mental Health. In addition, Ministerial Decision No. A4/203/1988 established the requirements for obtaining a special nursing certificate. The Committee further notes that, pursuant to Law No. 2519/1997, graduates of the Technological Educational Institutes (TEI) Departments of Health Visitors can obtain a nursing specialty in mental health. The National Council for the Professional Development of Nursing defined other nursing specialities through the promulgation of section 45 of Law No. 4486/2017. The Government reports that, according to data compiled by the Nursing Directorate, as of November 2018, 1,550 nurses had acquired a specialty in pathology, 1,953 nurses in surgery, 920 nurses in paediatrics and 945 nurses and health visitors in mental health. In respect of the education and training policy for nursing

personnel, the Government indicates that substitute teachers in the relevant specialties are recruited through a call for candidates issued by Ministerial Decision, whereas school nurses are recruited by the Regional Directorates of Education. The Committee notes that, in the field of higher education, during the reference period, two Higher Educational Institutes (AEI) and seven TEI provided first cycle programmes of studies in nursing. In its supplementary information, the Government indicates that, in the context of addressing the COVID-19 pandemic, enhancing nursing personnel and upgrading their skills are among the key actions taken by the Ministry of Health to strengthen the health care system. In this respect, the Committee notes with ***interest*** the adoption of Law 4690/2020 ratifying: (a) the Emergency Law of 13 April 2020 on "Measures to address the continuing impact of the Coronavirus COVID-19 pandemic and other urgent provisions" and (b) the Emergency Law dated 1 May 2020 on "Additional measures to address the continuing impact of the Coronavirus COVID-19 pandemic and return to normal, social and economic life and other provisions". According to Law 4690/2020, all nursing specialties are established in line with European standards. It also provides for the creation and filling of 2,250 posts for trainee specialist nurses. In order to meet the needs created by the pandemic, the Government introduced training programs in the specialties of Critical Care and ER Nursing and Public Health/Community Health Nursing, which will be offered for the period 2020–2021, targeted mainly at unemployed male and female nurses. Under the same law, the Programme "Be a Volunteer to tackle address Covid-19" was established and implemented in public health facilities until June 2020. The Committee notes that more than 10,000 participants providing voluntary services in specialties relevant to healthcare account for 38.9 per cent of the total participants. Of this 38.9 per cent, 6.4 per cent were nurses and 11.9 per cent were assistant nurses. ***The Committee requests the Government to provide information on developments in relation to the adoption of a national health strategy as well as reforms to primary healthcare. It further requests the Government to provide information on any legislative amendments introduced relating to the operation of public and private health services and, if applicable, to supply copies of any relevant legislative texts. It also requests the Government to provide information concerning measures taken in order to prevent or address the shortage of qualified nurses, indicating the measures taken in relation to education and training as well as in relation to employment and working conditions, including career prospects and remuneration, with the aim of attracting men and women to the profession and retaining them in it. In the context of the global COVID-19 pandemic, the Committee invites the Government to provide updated information on the implementation of the measures taken to strengthen the health system and to address the increasing demand for qualified nurses.***

*"Exclusive" nurses.* In its previous comments, the Committee noted that the shortage in qualified nursing personnel led to specific practices, including recourse to so-called "exclusive" nurses, namely female migrant workers employed in a quasi-nursing capacity and even informal hospital services provided by patients' families, which are increasingly tolerated by public establishments. In response to the Committee's previous request for information on "exclusive" nurses, the Government provides data from the different regions in the country regarding the employment of this category of nurses. In its observations, the GSEE expresses its concern with respect to this form of atypical work. ***The Committee requests the Government to supply detailed information in its next report on the conditions of recruitment and work of foreign nurses and "exclusive" nurse, as well as measures taken to regulate their activities. The Committee requests the Government to provide its comments in respect of the observation of the GSEE.***

*Article 5(2) and (3). Determination of conditions of employment and work.* The Government indicates that there is no collective agreement in force covering the country's nursing personnel. It nevertheless refers to the 19 September 2014 Collective Labour Agreement "on the regulation of the conditions of remuneration and employment of workers, members of primary associations of the Federation of Greek Healthcare Institution Unions (OSNIE) employed at private clinics that are members of the Association of Greek Clinics (SEK) across the country". The Government adds that legal disputes arising between nursing employees and their employers can be submitted to conciliation, mediation or arbitration procedures. The Committee notes that, each year, the competent department of the Ministry of Labour registers a relatively small number of cases of dispute resolution involving parties from trade union organizations of workers covering hospital staff and employer-operators of health service providers. In particular, the Government indicates that, from 1 June 2019 until 15 July 2020, the Ministry's relevant Department has not handled any cases involving resolution of disputes between nursing employees and their employers through conciliation. The Committee takes note of a series of arbitration awards referred to by the Government. On the other hand, the GSEE observes that there are important difficulties concerning the procedure for collective bargaining and the conclusion of new sectoral collective agreements, which were aggravated by the expiry of former collective agreements enabling employers to pay nursing personnel in private hospitals on the basis of the minimum wage. ***The Committee requests the Government to provide information on the progress and results of collective negotiations to determine employment and working conditions of nursing personnel.***

*Article 6. Employment conditions of nursing personnel. Social security. Hours of work.* The Government indicates that nursing personnel in the public and private sectors enjoy insurance coverage

against risks of old age, disability, death, illness, maternity and unemployment. In its supplementary information, the Government indicates that the relevant Department of the Ministry of Labour and Social Affairs is considering including nurses who fall under the pension protection of the former Public Sector Fund, in the pension scheme for Heavy and Arduous Occupations. In response to the Committee's previous request regarding the List of Arduous and Unhealthy Occupations set out in Law No. 3863/2010, the Government reports that a new List was finalized after consultation with the social partners through the Social Security Council. In this regard, the conclusions of the Standing Committee on Arduous and Unhealthy Occupations, in which representatives of the social partners, experts from the Ministry of Labour and Social Security (formerly IKA ETAM, now known as EFKA) and representatives of scientific institutions participated. The Government indicates that the new List attempted to rationalize and modernize the old one, taking into account the technological developments and their consequences in current labour data. It also indicates that, under Law No. 3863/2010, employees excluded from the prior List continued to be covered under the pension scheme until the end of 2015, with a view to ensuring their protection. In particular, the Committee notes that the new List stipulates, inter alia, that, male and female nurses working under fixed-term or indefinite contracts in nursing institutions, clinics, microbiological and biochemical laboratories and health insurance institutions are covered under the Regulation on Arduous and Unhealthy Occupations, with the exception of those employed in health centres within the framework of rationalization and modernization of the Regulation on Arduous and Unhealthy Occupations. In its observations, the GSEE expresses concern with regard to the difficult working conditions of nursing personnel, which are aggravated by the understaffing of hospitals and the imposed working hours schedule. The GSEE maintains that, under the current legislation nursing staff in hospitals works in three consecutive 8-hour shifts. ***The Committee requests the Government to supply a copy of the Regulation on Arduous and Unhealthy Occupations. In addition, it reiterates its request that the Government provide information on whether and to what extent this exclusion impacts on social security protection for nursing personnel. Recalling that this Article of the Convention aims to ensure that nursing personnel – as any other worker – are entitled to sufficient rest and leisure in order to avoid fatigue, the Committee requests the Government to address GSEE's observations regarding the legal provisions allowing for 3 consecutive 8-hour shifts and to provide information on the provisions or other measures taken guaranteeing that nursing personnel enjoy conditions of employment and work at least equivalent to those of other workers in relation to hours of work, including regulation and compensation of overtime, inconvenient hours and shift work.***

*Article 7. Occupational safety and health.* In response to the Committee's previous comments, the Government indicates that the National Strategy for Health and Safety at Work (2016–20) was adopted following consultations with the social partners in the Health and Safety at Work Council of the Supreme Labour Council. In its observations, the GSEE comments that the poor health and safety conditions under which nursing personnel work expose them to exhaustion and burn out. The GSEE refers to a series of studies, which show that irregular shifts in combination with the very small number of nurses working during each shift place a heavy burden on these workers, making the performance of their duties extremely difficult. In particular, the GSEE indicates that the morning shift is usually served by two to four nurses but the afternoon and night shifts by only one nurse. The Committee notes that, in the context of the COVID-19 pandemic, the need for nursing personnel has increased, which may aggravate these phenomena. ***The Committee requests the Government to provide a copy of the National Strategy in force and reiterates its request that the Government provide information on progress made and results achieved with respect to occupational safety and health for nursing personnel, including with respect to ensuring adequate staffing on all shifts during the COVID-19 pandemic. The Committee also requests the Government to provide information on the measures implemented to prevent and reduce psychosocial risks, and promote mental health and well-being, in addition to preventing the risk of long-term effects on nurses' well-being, particularly in the context of the pandemic.***

*Exposure to special risks.* The Committee notes that according to "ILO: Country policy responses, COVID-19 and the world of work", the Government has allocated €85 million to the Ministry of Health to support the purchase of sanitary equipment and the hiring of 2,000 health professionals. The Committee draws the attention of the Government to Paragraph 49 of Recommendation No. 157, which provides that: "(1) all possible steps should be taken to ensure that nursing personnel are not exposed to special risks. Where exposure to special risks is unavoidable, measures should be taken to minimise it; (2) measures such as the provision and use of protective clothing, immunisation, shorter hours, more frequent rest breaks, temporary removal from the risk or longer annual holidays should be provided for in respect to nursing personnel regularly assigned to duties involving special risks so as to reduce their exposure to these risks; (3) In addition, nursing personnel who are exposed to special risks should receive financial compensation." The Committee also draws the Government's attention to the ILO Guidelines on decent work in public emergency services, 2018, which recognize the need to protect public emergency workers, including emergency health workers, from exposure to communicable diseases. In particular, paragraphs 50 and 51 of the Guidelines stress that suitable and sufficient personal protective equipment (PPE) should be provided as protection against exposure to hazardous conditions for public emergency services (PES)

workers and that workers and/or their representatives should be consulted and participate in relation to the selection and correct use of PPE. ***Noting that nursing personnel are at high risk of being infected while treating patients with suspected or confirmed COVID-19, particularly when infection control precautions including use of personal protective equipment (PPE) are not strictly practiced, the Committee requests the Government to provide detailed updated information on the safety measures adopted or envisaged including the provision of PPE and training in its use, as well as provision of adequate rest breaks during workers' shifts and limitations on excessive hours wherever possible, with a view to protecting the health and wellbeing of nurses and limiting as much as possible their risk of contracting COVID-19.***

*Part V of the report form. Practical application.* The Committee notes the data provided on the number of registered nursing students for the 2017–18 academic year, as well as statistics on the number of nursing students enrolled from for the academic years from 2013 to 2018. The Committee also takes note of the detailed information on persons practising in the nursing profession per level of training and field in the public and private sector based on the estimates, according to which 135,361 doctors and 55,963 nurses and midwives were employed in the beginning of 2020. The Committee notes a pronounced imbalance in the availability of doctors compared to nurses in Greece and observes that, according to the European Commission 2019 Country Health Profile on Greece, the country has the highest number of doctors but the lowest number of nurses per 1,000 population of any country in the European Union. ***The Committee requests the Government to provide detailed information, disaggregated by age, sex and region, concerning the situation of nursing personnel in the country, including the nurse-population ratio, the number of nursing personnel broken down by public and private healthcare establishments, the number of students who graduate from nursing colleges annually and the number of institutions offering nursing education and training, the number of female and male nurses who enter and leave the profession each year, the organization and the operation of all institutions which provide healthcare services, as well as official studies, surveys and reports addressing health workforce issues in the Greek health sector, including those that might have been developed in the context of the COVID-19 pandemic.***

## Malawi

### Nursing Personnel Convention, 1977 (No. 149) (ratification: 1986)

*Article 2 of the Convention. National policy concerning nursing services and nursing personnel. Consultation.* The Committee notes with ***interest*** the range of policy initiatives adopted by the Government during the reporting period in relation to public health services and the health workforce, particularly with respect to nursing services and nursing personnel. These policies were developed following consultation with and through the active participation of the relevant stakeholders, including the private sector, health training institutions, relevant regulatory bodies and civil society organizations. The Committee notes the adoption of Malawi's first National Health Policy (NHP) in July 2017, which establishes an overarching framework to guide the achievement of the country's health sector. It includes among its priority areas: health service delivery; human resources for health; leadership and governance; and health financing. In relation to the health workforce, the 2017 NHP contemplates the adoption of measures to ensure that a sufficient number of adequately trained and motivated health workers, including nurses, are recruited, deployed and retained in line with the health needs of the population at all levels of healthcare service delivery. The Committee also notes the adoption of the medium-term Health Sector Strategic Plan II (HSSP II) in 2017, which outlines a range of objectives and activities and guides for the use of resources during 2017–22. The HSSP II a set of priority strategies, including: improving retention and recruitment of properly deployed and motivated health workers and strengthening the health workforce planning process. The Committee further notes the development, in alignment with the above-mentioned policies on health and health workers, of the Nursing and Midwifery Policy (NMP), adopted in June 2018. The 2018 NMP provides a framework for the provision of comprehensive, quality and equitable nursing and midwifery services that will contribute to achieving the country's health-related goals. However, challenges noted in the 2018 NMP include a high disease burden in the country, as well as high rates of maternal mortality (439 per 100,000 births), neonatal mortality (27 per 1,000 live births) and an under-5 mortality rate of 64 per 1,000. It is noted that the maternal mortality ratio will need to be reduced by 84 per cent to meet Sustainable Development Goal targets. The main objectives of the 2018 NMP include: reducing nursing and midwifery vacancy rates from the current 63 per cent to 50 per cent by 2022; providing guidance to decision-makers, stakeholders and partners for the effective planning and implementation of nursing and midwifery services; facilitating delivery of quality nursing and midwifery services; supporting quality clinical mentorship and supervision of nursing students; and timely placement of new nursing and midwifery graduates. In addition, the 2018 NMP envisages the participation of a broad range of actors in its monitoring and implementation, including workers' organizations, nurses' associations, private sector organizations, development partners, and non-governmental organizations. In addition, the Committee notes the implementation of the Malawi German Health Programme (MGHP), which calls for the adoption of measures, in line with the 2017 NHP

and the HSPP II, to ensure a better distribution and increased qualification of clinical and nursing staff in the area of maternal and newborn healthcare. ***The Committee requests the Government to provide detailed, up-to-date information on the measures taken in the context of the National Health Policy, the Health Sector Strategic Plan II 2017–22, the Nursing and Midwifery Policy and the Malawi German Health Programme, as well as on their impact in practice. In particular, the Committee requests the Government to provide detailed information on the implementation and impact of those measures designed to provide nursing personnel with employment and working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it.***

*Community health nursing.* The Committee notes that, according to the HSSP II, a significant proportion of Malawi's population (84 per cent) has no access to healthcare, especially those persons residing in rural and hard-to-reach areas of the country. In this context, the Committee notes the adoption of the country's first National Community Health Strategy 2017–22 (NCHS) in November 2017, which is aligned with existing national health policies as well as with the HSSP II. The 2017 NCHS was developed following an intensive consultative process with relevant stakeholders in the health sector, which included local communities. The principal objective of the 2017 NCHS is to ensure quality, integrated community health services that are affordable, culturally acceptable, scientifically appropriate, and accessible to every household. In order to achieve this goal, the 2017 NCHS includes among its strategic objectives that of building a sufficient, equitably distributed, well-trained community health workforce that includes community nursing personnel. The Committee notes that, according to the 2017 NCHS, there is a shortage of community nurses. Moreover, the 2017 NCHS indicates that community nurses are being used to fill gaps at health facilities and are therefore spending less time on community work. They face challenges that include: lack of clarity regarding their roles and tasks; inadequate training and supervision; and poor incentives. To address the shortage of adequately trained and motivated community health workers (CHWs), the 2017 NCHS sets out a number of key interventions: recruitment of additional CHWs, including a minimum of two community health nurses (CHNs) per health centre and one community midwife assistant (CMA) per community health delivery structure; promoting equitable geographical distribution of CHWs; and providing high-quality, integrated pre-service and in-service training to all CHWs. The 2017 NCHS also envisages the launch of a more standardized package of financial, non-financial, social and performance-based incentives aimed at increasing the retention of CHWs and supporting their strong performance across the country. The Committee further notes that the 2018 NMP includes a policy priority area on community health nursing and midwifery. In this regard, the 2018 NMP includes the following strategies, among others: providing leadership for community health nursing and midwifery services and strengthening such services by integrating community health nursing interventions in all nursing and midwifery services. ***The Committee requests the Government to provide detailed updated information on the effective implementation, monitoring and impact of the measures adopted in the framework of the National Community Health Strategy 2017–22 and the 2018 Nursing and Midwifery Policy with regard to nursing services and nursing personnel, including nurses, midwives and community health workers.***

*Mental health nurses.* The Committee notes that, according to the HSSP II, there are many people in Malawi with mental disorders, a majority of whom seek medical care at health facilities, but are misdiagnosed due to presenting with physical symptoms. Common disorders such as depression and anxiety, whose prevalence is estimated at 10–20 per cent are often missed or not treated. The Government indicates in the HSSP II that, although at least 20 psychiatric nurses and psychiatric clinical officers are trained every year, the number of psychiatric staff actively carrying out mental health-related activities is very low due to the general shortage of nurses in the health system. ***The Committee requests the Government to provide updated detailed information on the measures taken or envisaged to ensure the quantity and quality of mental health nursing care necessary for attaining the highest possible level of health for the population.***

*Article 2(2)(a) and (3). Nursing education and training.* The Committee notes that the HSSP II places a priority on improving the quality of training through the expansion of training and education opportunities, including through continuing professional development (CPD). The HSSP II provides for the adoption of specific measures to promote quality nursing and midwifery pre-service education, such as measures to institutionalize periodic curriculum reviews for all training institutions, as well as institutionalizing student–tutor ratios for specified nursing and midwifery training programmes; and measures to promote continued collaboration between teaching and clinical/community staff. The HSSP II also calls for the implementation of measures that encourage all nurses and midwives to pursue CPD, by institutionalizing CPD and supporting nurses and midwives undergoing upgrading courses and in-service training. The Committee notes in this regard that mandatory CPD for nurse midwives was re-introduced by the Nurses and Midwives Council of Malawi with the assistance of the MGHP. ***The Committee requests the Government to provide updated detailed information on the nature, implementation, monitoring and impact of the measures adopted, to ensure that nursing personnel, including midwives, are provided with quality education and training appropriate to the exercise of their functions as well as to their professional career development.***

*Article 5(2). Determination of conditions of employment and work.* In response to the Committee's previous comments, the Government indicates that the collective bargaining agreement for the nursing sector has still not been concluded. ***The Committee requests the Government to continue to provide information on the status of the collective bargaining process and progress made in this regard, as well as to transmit a copy of any collective agreements concluded for the nursing sector.***

*Article 7. Occupational safety and health.* The Committee notes that the President of Malawi declared a state of national disaster in response to the COVID-19 pandemic on 19 March 2020. The National Covid-19 Preparedness and Response Plan was subsequently launched for the period March–June 2020. The Plan includes among its specific objectives building the capacity of healthcare workers on highly infectious diseases (such as COVID-19), as well as procuring and distributing supplies and equipment to all treatment centres. In this regard, the Committee draws the attention of the Government to paragraph 49 of the Nursing Personnel Recommendation, 1977 (No. 157), which provides that: "(1) all possible steps should be taken to ensure that nursing personnel are not exposed to special risks. Where exposure to special risks is unavoidable, measures should be taken to minimise it; (2) measures such as the provision and use of protective clothing, immunisation, shorter hours, more frequent rest breaks, temporary removal from the risk or longer annual holidays should be provided for in respect to nursing personnel regularly assigned to duties involving special risks so as to reduce their exposure to these risks; and (3) in addition, nursing personnel who are exposed to special risks should receive financial compensation." The Committee also draws the Government's attention to the ILO *Guidelines on decent work in public emergency services,* 2018, which recognize the need to protect public emergency workers, including emergency health workers, from exposure to communicable diseases. In particular, paragraphs 50 and 51 of the Guidelines stress that suitable and sufficient personal protective equipment (PPE) should be provided as protection against exposure to hazardous conditions for public emergency services' workers and that workers and/or their representatives should be consulted and participate in relation to the selection and correct use of PPE. ***Noting that nursing personnel, as they are often in close contact with patients, are at high risk of being infected while treating patients with suspected or confirmed COVID-19 when infection control precautions, including use of personal protective equipment (PPE) are not strictly practiced, the Committee requests the Government to provide detailed updated information on the safety measures being taken or that are envisaged, including the provision of PPE and training in its use, as well as provision of adequate rest breaks during workers' shifts and limitations on excessive hours wherever possible, with a view to protecting the health and well-being of nurses and limiting as much as possible their risk of contracting COVID-19.***

*Part V of the report form. Application in practice.* The Committee notes that, according to the WHO Global Health Observatory, the total number of nursing and midwifery personnel in Malawi increased from 4,573 in 2016 to 7,957 in 2018. Nevertheless, the HSSP II indicates that the overall vacancy rate for nursing officers is currently 66 per cent (63 per cent among assistant community health officers, 72 per cent for chief nurse technicians, 45 per cent for chief nursing officers and 31 per cent for community midwifery assistants). This personnel shortage places a heavy burden on those nursing and midwifery professionals who are in employment. ***The Committee requests the Government to provide updated detailed information on the application of the Convention in practice, including statistical data disaggregated by sex, age and region concerning: the ratio of nursing personnel to the population; the number of persons enrolled in nursing schools; the number of female and male nurses who enter and leave the profession each year; the organization and the operation of all institutions which provide healthcare services; as well as official studies, surveys and reports addressing health workforce issues in the Malawi health sector.***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 110** *(Mexico);* **Convention No. 149** *(Congo, Ghana, Guinea, Guyana, Iraq, Kenya, Kyrgyzstan, Malta, Tajikistan);* **Convention No. 172** *(Belgium, Germany, Guyana, Iraq, Ireland, Lebanon);* **Convention No. 177** *(Albania, Argentina, North Macedonia, Tajikistan);* **Convention No. 189** *(Ecuador, Germany, Guyana, Ireland, Philippines).*

# 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)

## Albania

*Serious failure to submit.* The Committee notes with ***concern*** that the Government has not replied to its previous observations. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2019, that the Government of Albania will comply with its constitutional obligation to submit Conventions, Recommendations and Protocols to the competent authorities in the future. Referring to its previous observations, the Committee reiterates its request that the Government provide information on the submission to the Albanian Parliament of 24 instruments: the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted by the Conference at its 82nd Session, the Promotion of Cooperatives Recommendation, 2002 (No. 193), and the List of Occupational Diseases Recommendation, 2002 (No. 194), adopted by the Conference at its 90th Session, as well as the instruments adopted at the 78th, 84th, 86th, 89th, 92nd, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Angola

*Failure to submit.* The Committee notes with ***regret*** that the Government has not provided the information requested in its 2018 observation. ***The Committee therefore once again reiterates its request that the Government provide the information required under Article 19 of the ILO Constitution on the 17 instruments pending submission to the National Assembly. These are: the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180), adopted by the Conference at its 79th Session; the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted by the Conference at its 82nd Session; and the instruments adopted at the 86th, 91st, 92nd, 94th, 95th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions of the Conference (2003–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Antigua and Barbuda

*Failure to submit.* The Committee notes that the Government has not responded to its 2018 direct request. It therefore once again recalls the information provided by the Government in April 2014, indicating that the instruments adopted by the Conference from its 83rd to its 101st Sessions (1996–2012) were resubmitted by the Minister of Labour to the Cabinet of Antigua and Barbuda on 11 March 2014. ***The***

***Committee reiterates its request that the Government specify the dates on which the 23 instruments adopted by the Conference from its 83rd to its 101st Sessions were submitted to the Parliament of Antigua and Barbuda. The Committee also once again requests the Government to provide information on the submission to Parliament of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Bahamas

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has not provided information in response to its 2018 observation. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament). The Committee therefore once again urges the Government to provide information on the submission to Parliament of the 24 instruments adopted by the Conference at 14 sessions held between 1997 and 2017 (85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions). In addition, the Committee requests the Government to provide information on the submission to Parliament of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session.***

## Bahrain

*Serious failure to submit.* The Committee notes that the Government has not responded to its previous observation. Referring to its 2019 comments, it notes the information provided by the Government on 18 July 2019, indicating that it has complied with its constitutional obligations through the submission of the instruments adopted by the International Labour Conference to its Council of Ministers, as the competent authority. It also notes the information provided by the Government on 22 July 2019, indicating that the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), was submitted to the Council of Ministers. The Committee notes that the Government does not specify the date of submission. The Committee once again recalls its previous observations, in which it noted that article 47(a) of the Constitution of Bahrain requires the submission of Conventions to the Council of Ministers, as the body responsible for the formulation of the State's public policy and for following up on its implementation. The Committee further recalls the Government's indication in September 2011 that, with the establishment of a National Assembly – composed of the Consultative Council *(Majlis Al-Shura)* and the Council of Representatives *(Majlis al-Nuwab)* – there was a need to establish a new mechanism for submission of the instruments adopted by the Conference to the National Assembly. The Committee points out that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee recalls that the ILO remains available to explore with the national authorities the manner in which a mechanism could be established for the effective submission of instruments adopted by the Conference to the National Assembly in order to ensure the fulfilment of the Government's obligations under the ILO Constitution. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will take immediate steps to submit Conventions, Recommendations and Protocols to the National Assembly. The Committee therefore once again urges the Government to provide full information on the submission to the National Assembly of the 23 instruments adopted by the Conference at 14 sessions held between 2000 and 2017 (88th Session, 89th Session, 90th Session, 91st Session, 92nd Session, 94th Session, 95th Session, 96th Session, 99th Session, 100th Session, 101st Session, 103rd Session and 104th Session). It further reiterates its request that the Government specify the competent authority to which Recommendation No. 205 was submitted, as well as the date of submission and once again reminds the Government of the availability of ILO technical assistance in meeting its submission obligations. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Belize

*Serious failure to submit.* The Committee notes with ***concern*** that the Government has not replied to its previous observations. It recalls once again that the constitutional obligation of submission is of the

highest importance and is a fundamental element of the standards system of the ILO. The Committee expresses the firm hope, as did the Conference Committee in June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). ***The Committee requests the Government to provide information on the submission to the National Assembly of the 41 pending instruments adopted by the Conference at 21 sessions held between 1990 and 2017. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Plurinational State of Bolivia

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee notes that information has not been provided on the submission to the Plurinational Legislative Assembly of the 29 instruments adopted by the Conference at 19 sessions between 1993 and 2017. ***The Committee urges the Government to provide information on the submission to the Plurinational Legislative Assembly of the 29 instruments adopted by the Conference since 1993 for which submission is still pending. It reminds the Government that it may avail itself of ILO technical assistance if it so wishes. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Brunei Darussalam

*Serious failure to submit.* The Committee notes with ***concern*** that the Government has once again not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore urges the Government to provide information on the submission to the competent national authorities, within the meaning of article 19(5) and (6) of the ILO Constitution, of the ten instruments adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2007–17). The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Central African Republic

*Failure to submit.* The Committee notes with ***regret*** that the Government has once again not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee requests the Government to provide information on the submission to the National Assembly of the eight instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Chad

*Failure to submit.* The Committee notes with ***regret*** that the Government has once again not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee requests the Government to provide information on the submission to the competent authorities of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Chile

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again not replied to its previous comments. It recalls that the constitutional obligation of submission is of the

highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference in June 2019, that the Government of Chile will comply with its obligations to submit Conventions, Recommendations and Protocols to the competent authorities in the future. The Committee therefore reiterates its request that the Government provide the required information, indicating the date of submission to the National Congress of 26 instruments adopted at 16 sessions of the Conference between 1996 and 2017 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 95th (the Employment Relationship Recommendation, 2006 (No. 198)), 96th, 99th, 101st, 103rd, 104th and 106th Sessions). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Comoros

*Serious failure to submit.* The Committee notes with ***concern*** that the Government has not provided the information requested in its 2018 Observation. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It therefore urges the Government to provide information on the submission to the Assembly of the Union of Comoros of the 44 instruments adopted by the Conference at the 22 sessions held between 1992 and 2017. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Congo

*Serious failure to submit.* The Committee notes with ***concern*** that the Government has yet again not replied to its previous comments. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference in June 2019, that the Government of Congo will comply with its obligations to submit Conventions, Recommendations and Protocols to the competent authorities in the future. The Committee once again requests the Government to complete the submission procedure in relation to 65 Conventions, Recommendations and Protocols, adopted by the Conference during 31 sessions from 1970 to 2017, which have not yet been submitted to the National Assembly. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Croatia

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has not provided the information requested in its 2018 Observation. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to provide information on the submission to the Croatian Parliament of the 22 instruments adopted by the Conference at 13 sessions held between 1998 and 2017 (86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Democratic Republic of the Congo

*Serious failure to submit.* The Committee notes that the Government has once again not replied to its 2018 direct request. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee reiterates its request that the Government provide information on the eight instruments pending submission to Parliament adopted from the 99th Session (2010) to the 106th Session (2017) of the Conference. In addition, it requests the Government to provide information on the submission of the Violence at Work Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Dominica

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no reply to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore once again urges the Government to provide information on the submission to the House of Assembly of the 42 instruments adopted by the Conference during 21 sessions held between 1993 and 2017 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions). The Committee also requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).*** It recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## El Salvador

*Serious failure to submit.* The Committee notes that the Government has not responded to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. In this context, the Committee recalls the information provided by a Government representative before the Conference Committee at its 108th Session in June 2019, indicating that the country welcomed the technical cooperation received from the ILO for the preparation of the Protocol of Institutional Procedures for the submission of ILO instruments. The Government representative indicated that the Government would soon take the first steps for the submission of the relevant Conventions and Recommendations to the competent authority. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent national authority. The Committee once again urges the Government to submit to the Legislative Assembly the instruments adopted at 23 sessions of the Conference held between October 1976 and June 2017. Moreover, it once again requests the Government to provide information on the submission of the remaining outstanding instruments adopted by the Conference at its 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163), 69th (Recommendation No. 167) and 90th (Recommendations Nos 193 and 194) Sessions. The Committee also requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Equatorial Guinea

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. Accordingly, the Committee once again urges the Government to provide information on the submission to Parliament of the 35 instruments adopted by the Conference between 1993 and 2017. It further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Gabon

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no reply to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore once again urges the Government to provide information concerning the submission to Parliament of the 25 instruments adopted at the 82nd, 83rd, 85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions of the Conference. The Committee further requests the Government to provide***

***information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Gambia

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again requests the Government to provide information on the submission to the National Assembly of the eight instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). The Committee further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Grenada

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no response to its previous comments. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***Referring to its previous observations, the Committee once again urges the Government to communicate the date on which the instruments adopted by the Conference between 1994 and 2006 were submitted to the Parliament of Grenada and to provide information on the decisions taken by the Parliament, if any, in relation to the instruments submitted. The Committee also once again reiterates its request that the Government provide information on the submission to Parliament of the nine instruments adopted at the 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions of the Conference (2007–17). The Committee further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Guinea

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again urges the Government to provide information regarding the submission to the National Assembly of the 29 instruments adopted at 16 sessions held by the Conference between October 1996 and June 2017 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 101st, 103rd, 104th and 106th Sessions). The Committee further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Guinea-Bissau

*Submission.* The Committee notes that the Government has provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide information on the submission to the Assembly of the Republic of the 19 remaining instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions (2001–15). The Committee further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Guyana

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again requests the Government to provide information on the submission to the Parliament of Guyana of the eight instruments adopted by the Conference at its 96th, 99th, 101st, 103rd, 104th and 106th Sessions. The Committee further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Haiti

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). The Committee therefore once again urges the Government to provide information with regard to the submission to the National Assembly of the following 63 instruments:***

- ***the remaining instruments from the 67th Session (Conventions Nos 154 and 155, and Recommendations Nos 163 and 164);***
- ***the instruments adopted at the 68th Session;***
- ***the remaining instruments adopted at the 75th Session (Convention No. 168, and Recommendations Nos 175 and 176); and***
- ***the instruments adopted at 25 sessions of the Conference held between 1989 and 2017.***

***The Committee further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Hungary

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again not responded to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee accordingly reiterates its request that the Government provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). The Committee further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Iraq

*Failure to submit*. The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. It therefore once again recalls the detailed information provided by the Government in November 2017, including the dates of submission to the Council of Representatives *(Majlis Al-Nuwaab)* of each of the instruments adopted by the Conference at its 88th, 90th, 92nd, 95th, 96th, 99th, 100th and 101st Sessions (2000–12). The Committee further recalls the Government's indication that Recommendations submitted to the Council of Representatives were not examined by the Council, but were transmitted to the Ministry of Labour and Social Affairs which, according to the Government's indication, is the competent authority with respect to Recommendations. The Committee further recalls the information provided by the Government in March 2017, indicating that the Protocol of 2014 to the Forced Labour Convention, 1930, was submitted to the competent authority. It notes in this regard that no information was provided on the date of submission, or on whether the instrument in question was in fact submitted to the Council of Representatives *(Majlis Al-Nuwaab).* The Committee once again recalls that, by virtue of article 19(5) and (6) of the ILO Constitution, each of the Members of the Organization undertakes to submit the instruments adopted by the Conference to the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. In the 2005 memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. ***The Committee therefore reiterates its request that the Government provide more specific information on the submission to the Council of Representatives of the remaining 12 instruments adopted by the Conference from 2000 to 2015. The Committee further requests the Government to provide information on the submission to the Council of Representatives of the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, and the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Kazakhstan

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide information on the date of submission of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), to Parliament. Moreover, the Committee once again requests the Government to provide information on the submission to Parliament of the remaining 36 instruments adopted by the Conference between 1993 and 2017, including with respect to the date of submission of each instrument. The Committee also requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Kiribati

*Submission to Parliament*. The Committee notes with ***satisfaction*** the Government's indication that the 23 instruments adopted by the Conference at its 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions were submitted to the competent authority. The Committee welcomes the progress made by the Government in complying with its constitutional obligation of submission.

## Kuwait

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again not provided the requested information on submission to the competent authority (the National Assembly). It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee expresses the firm hope, as did the Conference Committee in 2016, 2017, 2018 and 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the National Assembly *(Majlis Al-Ummah)*. ***The Committee therefore once again requests the Government to indicate the date of submission of the instruments adopted by the Conference at its 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions to the National Assembly (Majlis Al-Ummah). In addition, referring to its previous comments, the Committee reiterates its request that the Government specify the date of submission to the National Assembly of the instruments adopted at the 77th Session (Conventions Nos 170 and 171, Recommendations Nos 177 and 178, and the Protocol of 1990), 80th Session (Recommendation No. 181), 86th Session (Recommendation No. 189) and 89th Session (Convention No. 184 and Recommendation No. 192) of the Conference. The Committee also reiterates its request that the Government provide information on the steps taken to submit the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted at the 106th Session of the International Labour Conference to the National Assembly. The Committee further requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Kyrgyzstan

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again failed to reply to its previous comments. The Committee therefore once again recalls the information provided by the Government in November 2016 relative to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), concerning the characteristics of the informal economy in Kyrgyzstan. The Committee noted, however, that the Government has provided no information relating to submission. The Committee therefore once again refers to the comments it has been formulating since 1994, and recalls that, under article 19 of the ILO Constitution, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in 2016, 2017, 2018 and 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee once again urges the Government to provide information on the submission to the competent national authority of the 42 instruments adopted by the Conference at 21 sessions held from 1992 to 2017. The Committee reminds the Government of the availability of ILO technical assistance to assist it in overcoming this serious delay. In addition, the Committee requests the Government to provide information on the submission of the***

***Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Lebanon

*Serious failure to submit.* The Committee notes that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee once again recalls the information provided by the Government in February 2016, indicating that the Ministry of Labour had submitted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), to the Council of Ministers for consideration, and that the Council of Ministers had decided to establish a special commission to examine the Recommendation. ***The Committee once again refers to its previous comments and reiterates its request that the Government indicate the date on which the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17) were submitted to the National Assembly (Majlis Al-Nuwwab). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Liberia

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in 2017, 2018 and 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It also reiterates its request that the Government provide information on the submission to the National Legislature of the 23 instruments adopted by the Conference at its 77th, 82nd, 88th, 89th, 90th, 92nd,95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190), and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Libya

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again provided no reply to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authorities. The Committee therefore once again requests the Government to provide information on the submission to the competent national authorities (within the meaning of article 19(5) and (6) of the ILO Constitution) of the 35 Conventions, Recommendations and Protocols adopted by the Conference at 18 sessions held between 1996 and 2017. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Malawi

*Failure to submit.* The Committee notes that the Government has provided no reply to its previous comments. It therefore recalls the information provided by the Government concerning the submission to the President on 12 December 2018 of the HIV and AIDS Recommendation, 2010 (No. 200), adopted by the Conference at its 99th Session, the Domestic Workers Convention, 2011 (No. 189), adopted by the Conference at its 100th Session, the Forced Labour (Supplementary Measures) Recommendation, 2014, adopted by the Conference at its 103rd Session, and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session. In addition, the Government indicated that the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), was submitted to the competent authority. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. While noting the Government's indication that the President is a member of the Parliament, the Committee recalls that the obligation of submission cannot be considered to have been fulfilled until the ILO instruments adopted have reached and been submitted to the legislative body. ***The Committee therefore once again requests the Government to provide information on the submission***

***to Parliament, and the dates of submission, of the seven instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Malaysia

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It once again requests the Government to provide information on the submission to the Parliament of Malaysia of the instruments adopted by the Conference at its 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2006–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Maldives

*Serious failure to submit.* The Committee notes that the Government has once again provided no response to its previous comments. The Committee recalls that the Maldives became a Member of the Organization on 15 May 2009. Subsequently, in accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions. ***The Committee once again requests the Government to provide information on the submission (indicating the dates of submission) to the People's Majlis of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).*** The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the People's *Majlis* of the instruments adopted by the Conference.

## Malta

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in 2017, 2018 and 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee once again requests the Government to provide information on the submission to the House of Representatives of the instruments adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2007–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Marshall Islands

*Serious failure to submit.* The Committee notes that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee recalls that Marshall Islands became a Member of the Organization on 3 July 2007. In accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and the Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). ***The Committee reiterates its request that the Government provide information on the submission to Parliament of the eight instruments adopted by the Conference between 2010 and 2017. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the ILO Constitution relating to the submission of the instruments adopted by the Conference to the competent authorities.

## Mexico

*Failure to submit.* ***The Committee reiterates its request that the Government provide information on the submission to the Senate of the Republic of the instruments adopted at the 95th, 96th, 100th, 103rd and 104th Sessions of the Conference. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Mozambique

*Submission.* The Committee notes that the Government has not provided a response to its previous comments. ***It therefore once again urges the Government to provide information on the submission to the Assembly of the Republic of the 33 instruments adopted by the Conference at 16 sessions held between 1996 and 2014. It also requests the Government to specify the date of submission to the Assembly of the Republic of Convention No. 129. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## North Macedonia

*Serious failure to submit.* The Committee notes with ***concern*** that the Government has once again not replied to its previous comments. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore urges the Government to provide information concerning the submission to the Assembly of the Republic (Sobranie) of 27 instruments (Conventions, Recommendations and Protocols) adopted by the Conference from October 1996 to June 2017. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Pakistan

*Serious failure to submit.* The Committee notes that the Government has not responded to its previous comments. It recalls the information provided by the Government on 24 July 2019, indicating that the Ministry of Overseas Pakistanis and Human Resource Development (MOPHRD) of Pakistan has initiated the process for placing the pending instruments before the Parliament. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in 2017, 2018 and 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee once again requests the Government to complete the procedure to submit the remaining 39 instruments adopted by the Conference at 19 sessions held between 1994 and 2017 to the competent national authorities, and to keep the Office informed of progress made. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Papua New Guinea

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee once again urges the Government to submit to the National Parliament the 23 instruments adopted by the Conference at 14 sessions held between 2000 and 2017. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Republic of Moldova

*Submission.* The Committee notes with ***regret*** that the Government has once again provided no reply to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again requests the Government to provide information on the submission to Parliament of the 14 instruments adopted by the Conference at its 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th,***

***100th, 101st, 103rd and 106th Sessions. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Rwanda

*Serious failure to submit.* The Committee notes that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore urges the Government to provide information on the date of submission to the National Assembly of the 36 Conventions, Recommendations and Protocols adopted by the Conference at 19 sessions held between 1993 and 2017 (80th, 82nd, 83rd, 84th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Saint Lucia

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It once again urges the Government to provide information on the submission to Parliament of the 48 remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2017 (66th, 67th (Conventions Nos 155 and 156 and Recommendations Nos 164 and 165), 68th (Convention No. 157 and Protocol of 1982), 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## Saint Vincent and the Grenadines

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again failed to reply to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the House of Assembly). It urges the Government to provide information on the submission to the House of Assembly of the 29 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 16 sessions held from 1995 to 2017 (82nd, 83rd, 85th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## Seychelles

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). It urges the Government to provide the requested information on the submission to the National Assembly***

***of the 20 instruments adopted by the Conference at 12 sessions held from 2001 to 2017. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## Sierra Leone

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has yet again failed to reply to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament). The Committee therefore once again strongly urges the Government to provide information on the submission to Parliament of the instruments adopted by the Conference in October 1976 (Convention No. 146 and Recommendation No. 154, adopted at its 62nd Session), and all instruments adopted between 1977 and 2017. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019). The Government is urged to take steps without delay to submit the 101 pending instruments to Parliament.*** The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## Solomon Islands

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Parliament). The Committee once again urges the Government to take steps without delay to submit to the National Congress the 63 pending instruments adopted by the Conference between 1984 and 2017 and to provide the information required under Article 19 of the Constitution to the International Labour Office. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## Somalia

*Serious failure to submit.* The Committee notes that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore urges the Government to take steps without delay to submit the 52 instruments adopted by the Conference between 1989 and 2017 to the competent national authority and to provide the information required under Article 19 of the ILO Constitution to the International Labour Office. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may avail itself of the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## Syrian Arab Republic

*Serious failure to submit.* The Committee notes with ***regret*** that the Government has once again failed to reply to its previous comments. It recalls the Government's indications in September 2015 that the Consultative Council for Consultation and Social Dialogue held discussions related to the submission of the instruments adopted by the Conference to the competent authorities. The Committee also recalls that 39 instruments adopted by the Conference are still pending submission to the People's Council. In this context, the Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore expresses the firm hope, as did the Conference Committee in June 2018 and June 2019, that the Government will provide information on the submission to the People's Council of the 39 instruments adopted by the Conference at its 66th and 69th Sessions (Recommendations Nos 167 and 168) and at its 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 85th, 86th, 90th (Recommendations Nos 193 and 194), 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions. The Committee urges the Government to take steps to submit the pending instruments without delay. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Timor-Leste

*Serious failure to submit.* The Committee notes that the Government has once again not replied to its previous comments. ***It therefore reiterates its request that the Government provide information on the submission to the National Parliament of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

## Tuvalu

*Serious failure to submit.* The Committee notes with ***concern*** that the Government has once again provided no response to its previous comments. It recalls that Tuvalu became a Member of the Organization on 27 May 2008. In accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and the Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–15). ***The Committee trusts that the Government will take steps to submit without delay the eight instruments adopted by the Conference between 2010 and 2017 and provide the information required under article 19 of the ILO Constitution to the Office. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

In this context, the Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the ILO Constitution relating to the submission of the instruments adopted by the Conference to the competent authorities.

## Vanuatu

*Serious failure to submit.* The Committee notes with ***deep concern*** that the Government has once again provided no reply to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament of Vanuatu). The Committee urges the Government to provide information on the submission to the Parliament of Vanuatu of the instruments adopted by the Conference at 11 sessions held between 2003 and 2017 (91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee reminds the Government that, if it so wishes, it may request the technical assistance of the Office to assist it in achieving compliance with its obligations under article 19 of the Constitution.

## Yemen

*Serious failure to submit.* The Committee notes that the Government has once again provided no response to its previous comments. It therefore recalls the information provided to the Conference by the Government in June 2018 indicating that it was not able to submit instruments adopted by the Conference to the House of Representatives due to the ongoing conflict in Yemen. ***Noting the complex situation in the country, particularly the ongoing conflict, the Committee trusts that, when national circumstances permit, the Government will be in a position to provide information on the submission to the House of Representatives of the instruments adopted by the Conference at its 90th, 94th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions, as well as on the submission of Recommendations Nos 191, 192 and 198, adopted by the Conference at its 88th, 89th and 95th Sessions. In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Zambia

*Serious failure to submit. Date of submission.* The Committee notes with ***regret*** that the Government has once again not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. It once again recalls the information provided by the Government in September 2010 indicating that 12 instruments adopted by the Conference from 1996 to 2007 had been submitted to the National Assembly. ***The Committee once again requests the Government to indicate the dates on which the above-mentioned instruments were submitted to the National Assembly. It also reiterates its request that the Government provide information on any action taken by the National Assembly in relation to the submissions, as well as with respect to the prior tripartite consultations that took place with the social partners. The Committee reiterates its request that the Government provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17). In addition, the Committee requests the Government to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

## Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: *Afghanistan, Argentina, Armenia, Australia, Austria, Bangladesh, Barbados, Belarus, Benin, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, China, Colombia, Cook Islands, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechia, Djibouti, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, France, Georgia, Germany, Ghana, Greece, Honduras, India, Islamic Republic of Iran, Ireland, Italy, Jamaica, Jordan, Kenya, Lao People's Democratic Republic, Lesotho, Lithuania, Madagascar, Mali, Mauritania, Mauritius, Mongolia, Montenegro, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Palau, Panama, Paraguay, Peru, Philippines, Portugal, Qatar, Republic of Korea, Romania, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Serbia, Singapore, Slovakia, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Sweden, Tajikistan, Thailand, Togo, Tonga, Tunisia, Turkmenistan, Uganda, Ukraine, United Republic of Tanzania, Uruguay, Uzbekistan, Bolivarian Republic of Venezuela, Viet Nam, Zimbabwe.*

# Appendices

# Appendix I. Reports requested on ratified Conventions registered as at 12 December 2020
## (articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th Session (November 1977), the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

# Appendix I. Reports requested on ratified Conventions

(articles 22 and 35 of the Constitution)

**List of reports registered as at 12 December 2020 and of reports not received**

*Note: First reports are indicated in parentheses.*

## Afghanistan

**7 reports requested**

· No reports received: Conventions Nos. 100, 111, 137, 140, 141, 142, 144

## Albania

**15 reports requested**

· 8 reports received: Conventions Nos. 81, 111, 129, 141, 144, 151, 154, 177
· 7 reports not received: Conventions Nos. 11, 87, 98, 100, 135, 185, (MLC, 2006)

## Algeria

**5 reports requested**

· 1 report received: Convention No. 87
· 4 reports not received: Conventions Nos. 11, 98, 135, 144

## Angola

**7 reports requested**

· 6 reports received: Conventions Nos. 12, 18, 81, 87, 98, (188)
· 1 report not received: Convention No. 100

## Antigua and Barbuda

**11 reports requested**

· No reports received: Conventions Nos. 11, 81, 87, 98, 100, 111, 135, 142, 144, 151, 154

## Argentina

**8 reports requested**

All reports received: Conventions Nos. 11, 87, 98, 135, 144, 151, 154, 177

## Armenia

**8 reports requested**

· 2 reports received: Conventions Nos. 17, 18
· 6 reports not received: Conventions Nos. 87, 98, 135, 144, 151, 154

## Australia

**5 reports requested**

All reports received: Conventions Nos. 11, 87, 98, 135, 144

## Austria

**6 reports requested**

· No reports received: Conventions Nos. 11, 87, 98, 135, 141, 144

## Azerbaijan

**7 reports requested**

All reports received: Conventions Nos. 11, 87, 98, 135, 144, 151, 154

## Bahamas

**6 reports requested**

· 4 reports received: Conventions Nos. 11, 87, 98, 144
· 2 reports not received: Conventions Nos. 185, MLC, 2006

## Bangladesh

**5 reports requested**

· No reports received: Conventions Nos. 11, 81, 87, 98, 144

## Barbados

**21 reports requested**

· 1 report received: Convention No. 118
· 20 reports not received: Conventions Nos. 11, 12, 17, 19, 29, 42, 81, 87, 97, 98, 100, 102, 105, 111, 122, 128, 135, 138, 144, 172

## Belarus

**6 reports requested**

· 1 report received: Convention No. 87
· 5 reports not received: Conventions Nos. 11, 98, 144, 151, 154

## Belgium

**11 reports requested**

All reports received: Conventions Nos. 11, 87, 98, 128, 130, 141, 144, 151, 154, 170, 172

## Belize

**22 reports requested**

· No reports received: Conventions Nos. 11, 19, 29, 87, 88, 97, 98, 100, 105, 111, 115, 135, 138, 140, 141, 144, 150, 151, 154, 155, 156, 182

## Benin

**6 reports requested**

· No reports received: Conventions Nos. 11, 87, 98, 135, 144, 154

## Bolivia (Plurinational State of)

**6 reports requested**

· No reports received: Conventions Nos. 87, 98, 131, 136, 162, 167

## Bosnia and Herzegovina

**7 reports requested**

· 6 reports received: Conventions Nos. 87, 98, 135, 144, 151, 154
· 1 report not received: Convention No. 11

## Botswana

**4 reports requested**

· No reports received: Conventions Nos. 87, 98, 144, 151

## Brazil

**7 reports requested**

· 3 reports received: Conventions Nos. 98, 151, 154
· 4 reports not received: Conventions Nos. 11, 135, 141, 144

## Brunei Darussalam

**2 reports requested**

· 1 report received: Convention No. 182
· 1 report not received: Convention No. 138

## Bulgaria

**4 reports requested**

All reports received: Conventions Nos. 11, 87, 98, 144

## Burkina Faso

**6 reports requested**

· No reports received: Conventions Nos. 11, 87, 98, 135, 141, 144

## Burundi

**7 reports requested**

All reports received: Conventions Nos. 11, 26, 87, 98, 111, 135, 144

## Cabo Verde

**2 reports requested**

· No reports received: Conventions Nos. 87, 98

## Cambodia

**2 reports requested**

· No reports received: Conventions Nos. 87, 98

## Cameroon

**5 reports requested**

All reports received: Conventions Nos. 87, 98, 108, 146, 158

## Canada

**7 reports requested**

All reports received: Conventions Nos. 27, 32, 87, 98, 108, 144, MLC, 2006

## Central African Republic

**3 reports requested**

All reports received: Conventions Nos. 87, 98, 144

## Chad

**15 reports requested**

· No reports received: Conventions Nos. 6, 11, 29, 81, 87, 98, 100, 102, 105, 111, 122, 138, 144, 151, 182

## Chile — 6 reports requested

All reports received: Conventions Nos. 27, 32, 87, 98, 144, 187

## China — 6 reports requested

· 4 reports received: Conventions Nos. 144, 155, 167, 170
· 2 reports not received: Conventions Nos. 27, 32

## China - Hong Kong Special Administrative Region — 6 reports requested

· 3 reports received: Conventions Nos. 87, 98, 144
· 3 reports not received: Conventions Nos. 32, 108, MLC, 2006

## China - Macau Special Administrative Region — 10 reports requested

· 2 reports received: Conventions Nos. 87, 98
· 8 reports not received: Conventions Nos. 22, 23, 27, 68, 69, 92, 108, 144

## Colombia — 5 reports requested

· 3 reports received: Conventions Nos. 87, 98, 144
· 2 reports not received: Conventions Nos. 22, 23

## Comoros — 13 reports requested

· 3 reports received: Conventions Nos. 87, 98, 144
· 10 reports not received: Conventions Nos. 6, 11, 13, 14, 81, 89, 100, 101, 106, 111

## Congo — 15 reports requested

· No reports received: Conventions Nos. 29, 81, 87, 98, 100, 105, 111, 144, 149, 150, 152, 182, 185, MLC, 2006, (188)

## Costa Rica — 9 reports requested

· 1 report received: Convention No. 87
· 8 reports not received: Conventions Nos. 92, 98, 113, 114, 134, 137, 144, 147

## Côte d'Ivoire — 11 reports requested

· No reports received: Conventions Nos. 87, 98, 100, 133, 144, 150, 155, 160, 161, 171, 187

## Croatia — 7 reports requested

All reports received: Conventions Nos. 27, 32, 87, 98, 113, 185, MLC, 2006

## Cuba — 11 reports requested

All reports received: Conventions Nos. 22, 23, 27, 87, 92, 98, 108, 110, 113, 137, 152

## Cyprus — 6 reports requested

· No reports received: Conventions Nos. 87, 98, 114, 144, 152, MLC, 2006

## Czechia — 8 reports requested

All reports received: Conventions Nos. 27, 87, 98, 108, 144, 154, 163, 164

## Democratic Republic of the Congo — 15 reports requested

· No reports received: Conventions Nos. 27, 81, 87, 94, 95, 98, 100, 111, 117, 119, 120, 135, 144, 150, 158

## Denmark — 8 reports requested

· 1 report received: Convention No. 27
· 7 reports not received: Conventions Nos. 87, 98, 108, 126, 144, 152, MLC, 2006

## Denmark - Faroe Islands — 6 reports requested

· 4 reports received: Conventions Nos. 98, 108, 126, MLC, 2006
· 2 reports not received: Conventions Nos. 27, 87

## Denmark - Greenland

**5 reports requested**

· No reports received: Conventions Nos. 7, 87, 98, 100, 126

## Djibouti

**22 reports requested**

· No reports received: Conventions Nos. 12, 17, 18, 19, 24, 29, 37, 38, 71, 81, 87, 98, 100, 105, 108, 111, 122, 125, 126, 138, 144, 182

## Dominica

**24 reports requested**

· No reports received: Conventions Nos. 11, 12, 14, 19, 22, 26, 29, 81, 87, 94, 95, 97, 98, 100, 105, 108, 111, 135, 138, 144, 147, 150, 169, 182

## Dominican Republic

**4 reports requested**

All reports received: Conventions Nos. 87, 98, 102, 144

## Ecuador

**6 reports requested**

All reports received: Conventions Nos. 87, 98, 113, 114, 144, 152

## Egypt

**15 reports requested**

All reports received: Conventions Nos. 22, 55, 56, 68, 69, 71, 87, 92, 98, 134, 137, 144, 147, 152, 166

## El Salvador

**3 reports requested**

· No reports received: Conventions Nos. 87, 98, 144

## Equatorial Guinea

**14 reports requested**

· No reports received: Conventions Nos. 1, 14, 29, 30, (68), 87, (92), 98, 100, 103, 105, 111, 138, 182

## Eritrea

**4 reports requested**

· 2 reports received: Conventions Nos. 105, 138
· 2 reports not received: Conventions Nos. 87, 98

## Estonia

**7 reports requested**

All reports received: Conventions Nos. 27, 87, 98, 108, 144, MLC, 2006, 188

## Eswatini

**3 reports requested**

· No reports received: Conventions Nos. 87, 98, 144

## Ethiopia

**4 reports requested**

All reports received: Conventions Nos. 87, 98, 138, 144

## Fiji

**10 reports requested**

· 2 reports received: Conventions Nos. 87, 98
· 8 reports not received: Conventions Nos. 11, 12, 19, 100, 108, 111, 144, MLC, 2006

## Finland

**8 reports requested**

All reports received: Conventions Nos. 27, 87, 98, 108, 137, 144, 152, MLC, 2006

## France

**12 reports requested**

· 7 reports received: Conventions Nos. 82, 87, 98, 137, 144, 152, 188
· 5 reports not received: Conventions Nos. 27, 71, 125, 149, 185

## France - French Polynesia

**23 reports requested**

· 14 reports received: Conventions Nos. 22, 23, 55, 56, 58, 69, 71, 87, 98, 108, 126, 144, 146, 147
· 9 reports not received: Conventions Nos. 29, 81, 82, 100, 111, 125, 129, 142, 149

## France - French Southern and Antarctic Territories

**14 reports requested**

· No reports received: Conventions Nos. 22, 23, 58, 68, 69, 87, 92, 98, 108, 111, 133, 134, 146, 147

## France - New Caledonia

**8 reports requested**

All reports received: Conventions Nos. 71, 87, 98, 108, 125, 126, 144, (188)

## Gabon

**4 reports requested**

· No reports received: Conventions Nos. 100, 111, 122, (MLC, 2006)

## Gambia

**8 reports requested**

· 2 reports received: Conventions Nos. 87, 98
· 6 reports not received: Conventions Nos. 29, 100, 105, 111, 138, 182

## Georgia

**3 reports requested**

· 1 report received: Convention No. 122
· 2 reports not received: Conventions Nos. 100, 111

## Germany

**6 reports requested**

All reports received: Conventions Nos. 97, 100, 111, 122, 172, 189

## Ghana

**10 reports requested**

· 4 reports received: Conventions Nos. 100, 111, 117, 144
· 6 reports not received: Conventions Nos. 29, 105, 107, 138, 149, 182

## Greece

**6 reports requested**

All reports received: Conventions Nos. 100, 111, 122, 142, 149, 156

## Grenada

**13 reports requested**

· No reports received: Conventions Nos. 12, 19, 29, 81, 87, 97, 98, 100, 105, 111, 138, 144, 182

## Guatemala

**11 reports requested**

All reports received: Conventions Nos. 87, 97, 98, 100, 110, 111, 122, 149, 156, 169, 175

## Guinea

**17 reports requested**

· 7 reports received: Conventions Nos. 100, 111, 117, 121, 122, 143, 149
· 10 reports not received: Conventions Nos. 114, 118, 135, 140, 151, 156, (167), (176), (187), (189)

## Guinea - Bissau

**22 reports requested**

· No reports received: Conventions Nos. 6, 12, 17, 18, 19, 26, 27, 29, 45, 68, 69, 81, 88, 92, 98, 100, 105, 107, 108, 111, 138, 182

## Guyana

**14 reports requested**

· No reports received: Conventions Nos. 94, 97, 98, 100, 105, 111, 138, 139, 140, 144, 149, 172, 182, 189

## Haiti

**24 reports requested**

· No reports received: Conventions Nos. 1, 12, 14, 17, 19, 24, 25, 29, 30, 42, 45, 77, 78, 81, 87, 90, 98, 100, 105, 106, 107, 111, 138, 182

## Honduras

**5 reports requested**

All reports received: Conventions Nos. 87, 100, 111, 122, 169

## Hungary

**12 reports requested**

· 3 reports received: Conventions Nos. 100, 111, 122
· 9 reports not received: Conventions Nos. 29, 105, 138, 140, 142, 144, 182, 185, MLC, 2006

## Iceland — 4 reports requested

· No reports received: Conventions Nos. 100, 111, 122, 156

## India — 7 reports requested

· No reports received: Conventions Nos. 81, 100, 107, 111, 122, 138, 182

## Indonesia — 3 reports requested

· No reports received: Conventions Nos. 100, 111, MLC, 2006

## Iran (Islamic Republic of) — 3 reports requested

All reports received: Conventions Nos. 100, 111, 122

## Iraq — 13 reports requested

· No reports received: Conventions Nos. 22, 23, 92, 100, 107, 111, 122, 144, 146, 147, 149, 172, 182

## Ireland — 6 reports requested

All reports received: Conventions Nos. 100, 111, 122, 172, 177, 189

## Israel — 4 reports requested

All reports received: Conventions Nos. 97, 100, 111, 122

## Italy — 7 reports requested

· 1 report received: Convention No. 122
· 6 reports not received: Conventions Nos. 97, 100, 111, 143, 149, 189

## Jamaica — 14 reports requested

· 2 reports received: Conventions Nos. 100, (MLC, 2006)
· 12 reports not received: Conventions Nos. 29, 94, 97, 105, 111, 117, 122, 138, 144, 149, 182, (189)

## Japan — 5 reports requested

· 2 reports received: Conventions Nos. 122, 156
· 3 reports not received: Conventions Nos. 87, 100, MLC, 2006

## Jordan — 8 reports requested

· 3 reports received: Conventions Nos. 105, 111, 185
· 5 reports not received: Conventions Nos. 100, 122, 142, 144, MLC, 2006

## Kazakhstan — 6 reports requested

All reports received: Conventions Nos. 87, 100, 105, 111, 122, 156

## Kenya — 10 reports requested

· 4 reports received: Conventions Nos. 17, 138, 149, 182
· 6 reports not received: Conventions Nos. 97, 100, 111, 140, 142, 143

## Kiribati — 10 reports requested

· No reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138, 182, 185, MLC, 2006

## Republic of Korea — 5 reports requested

All reports received: Conventions Nos. 100, 111, 122, 156, MLC, 2006

## Kuwait — 1 report requested

· No reports received: Convention No. 111

## Kyrgyzstan — 32 reports requested

· No reports received: Conventions Nos. 11, 17, 27, 29, 32, 45, 77, 78, 79, 81, 87, 90, 95, 97, 98, 100, 105, 111, 119, 120, 122, 124, 131, 138, 142, 144, 149, 154, 157, 159, 160, 182

## Lao People's Democratic Republic

**7 reports requested**

· No reports received: Conventions Nos. 6, 29, 100, 111, 138, 144, 182

## Latvia

**5 reports requested**

All reports received: Conventions Nos. 100, 111, 122, 142, 158

## Lebanon

**12 reports requested**

· No reports received: Conventions Nos. 29, 81, 88, 100, 105, 111, 122, 138, 142, 159, 172, 182

## Lesotho

**9 reports requested**

· No reports received: Conventions Nos. 29, 100, 105, 111, 135, 138, 144, 158, 182

## Liberia

**10 reports requested**

· No reports received: Conventions Nos. 29, 87, 98, 105, 111, 112, 113, 114, 144, MLC, 2006

## Libya

**7 reports requested**

All reports received: Conventions Nos. 88, 96, 100, 111, 122, 130, 138

## Lithuania

**7 reports requested**

· No reports received: Conventions Nos. 88, 100, 111, 122, 142, 159, 181

## Luxembourg

**8 reports requested**

All reports received: Conventions Nos. 2, 88, 96, 100, 111, 142, 158, 159

## Madagascar

**12 reports requested**

· No reports received: Conventions Nos. 29, 88, 100, 105, 111, 117, 122, 138, 144, 159, 182, 185

## Malawi

**17 reports requested**

· No reports received: Conventions Nos. 26, 45, 81, 97, 98, 99, 100, 105, 107, 111, 129, 144, 149, 150, 158, 159, 182

## Malaysia

**6 reports requested**

· 4 reports received: Conventions Nos. 88, 95, 123, 144
· 2 reports not received: Conventions Nos. 100, MLC, 2006

## Malaysia - Malaysia - Peninsular

**4 reports requested**

· 3 reports received: Conventions Nos. 11, 12, 17
· 1 report not received: Convention No. 19

## Malaysia - Malaysia - Sabah

**2 reports requested**

All reports received: Conventions Nos. 94, 97

## Malaysia - Malaysia - Sarawak

**4 reports requested**

· 3 reports received: Conventions Nos. 11, 12, 94
· 1 report not received: Convention No. 19

## Maldives

**8 reports requested**

· No reports received: Conventions Nos. 29, 100, 105, 111, 138, 182, 185, MLC, 2006

## Mali

**6 reports requested**

All reports received: Conventions Nos. 88, 100, 111, 122, 159, 181

## Malta

**13 reports requested**

All reports received: Conventions Nos. 2, 29, 88, 96, 100, 105, 111, 117, 138, 149, 159, 182, MLC, 2006

## Mauritania

**9 reports requested**

· 4 reports received: Conventions Nos. 29, 105, 138, 182
· 5 reports not received: Conventions Nos. 94, 96, 100, 111, 122

## Mauritius

**7 reports requested**

· 6 reports received: Conventions Nos. 2, 88, 94, 100, 111, 159
· 1 report not received: Convention No. MLC, 2006

## Mexico

**10 reports requested**

All reports received: Conventions Nos. 96, 100, 105, 110, 111, 140, 142, 144, 159, 172

## Mongolia

**6 reports requested**

· 5 reports received: Conventions Nos. 88, 100, 111, 122, 159
· 1 report not received: Convention No. 181

## Montenegro

**11 reports requested**

· No reports received: Conventions Nos. 2, 88, 100, 111, 122, 140, 142, 152, 158, 159, 185

## Morocco

**7 reports requested**

· No reports received: Conventions Nos. 2, 94, 100, 111, 122, 158, 181

## Mozambique

**7 reports requested**

· No reports received: Conventions Nos. 29, 88, 98, 100, 105, 111, 122

## Myanmar

**3 reports requested**

All reports received: Conventions Nos. 2, 29, 185

## Namibia

**3 reports requested**

· No reports received: Conventions Nos. 100, 111, 158

## Nepal

**2 reports requested**

· No reports received: Conventions Nos. 100, 111

## Netherlands

**12 reports requested**

All reports received: Conventions Nos. 88, 94, 100, 111, 122, 139, 140, 142, 148, 159, 170, 181

## Netherlands - Aruba

**13 reports requested**

· No reports received: Conventions Nos. 29, 87, 88, 94, 105, 113, 114, 122, 138, 140, 142, 144, 182

## Netherlands - Caribbean Part of the Netherlands

**3 reports requested**

All reports received: Conventions Nos. 88, 94, 122

## Netherlands - Curaçao

**7 reports requested**

· No reports received: Conventions Nos. 87, 88, 94, 122, 172, 182, MLC, 2006

## Netherlands - Sint Maarten

**3 reports requested**

· No reports received: Conventions Nos. 88, 94, 122

## New Zealand

**5 reports requested**

All reports received: Conventions Nos. 82, 88, 100, 111, 122

## New Zealand - Tokelau

**3 reports requested**

· No reports received: Conventions Nos. 82, 100, 111

## Nicaragua

**15 reports requested**

· 12 reports received: Conventions Nos. 6, 17, 77, 78, 95, 100, 105, 111, 122, 137, 140, 142
· 3 reports not received: Conventions Nos. 88, 117, MLC, 2006

## Niger

**6 reports requested**

· No reports received: Conventions Nos. 100, 111, 117, 142, 158, 181

## Nigeria

**6 reports requested**

· No reports received: Conventions Nos. 88, 94, 100, 111, 159, 185

## North Macedonia

**13 reports requested**

All reports received: Conventions Nos. 87, 88, 94, 98, 100, 111, 122, 140, 142, 158, 159, 177, 181

## Norway

**7 reports requested**

· 4 reports received: Conventions Nos. 94, 100, 111, 122
· 3 reports not received: Conventions Nos. 88, 142, 159

## Oman

**4 reports requested**

All reports received: Conventions Nos. 29, 105, 138, 182

## Pakistan

**6 reports requested**

All reports received: Conventions Nos. 29, 81, 90, 105, 138, 182

## Panama

**8 reports requested**

All reports received: Conventions Nos. 29, 77, 78, 81, 105, 124, 138, 182

## Papua New Guinea

**13 reports requested**

· No reports received: Conventions Nos. 26, 27, 29, 87, 98, 99, 100, 105, 111, 122, 138, 158, 182

## Paraguay

**12 reports requested**

· No reports received: Conventions Nos. 29, 59, 77, 78, 79, 81, 90, 105, 123, 124, 138, 182

## Peru

**10 reports requested**

All reports received: Conventions Nos. 29, 59, 77, 78, 79, 81, 90, 105, 138, 182

## Philippines

**8 reports requested**

All reports received: Conventions Nos. 29, 77, 87, 90, 105, 138, 151, 182

## Poland

**11 reports requested**

All reports received: Conventions Nos. 29, 77, 78, 79, 81, 90, 105, 124, 129, 138, 182

## Portugal

**13 reports requested**

· 4 reports received: Conventions Nos. 81, 129, MLC, 2006, 187
· 9 reports not received: Conventions Nos. 6, 29, 77, 78, 105, 124, 138, 182, 189

## Qatar

**5 reports requested**

· 2 reports received: Conventions Nos. 29, 81
· 3 reports not received: Conventions Nos. 105, 138, 182

## Republic of Moldova

**19 reports requested**

· 4 reports received: Conventions Nos. 105, 122, 138, 144
· 15 reports not received: Conventions Nos. 29, 81, 88, 92, 100, 111, 117, 129, 133, 142, 152, 158, 181, 182, 185

## Romania

**13 reports requested**

· No reports received: Conventions Nos. 6, 27, 29, 81, 87, 98, 105, 117, 122, 129, 138, 182, (MLC, 2006)

## Russian Federation

**11 reports requested**

· No reports received: Conventions Nos. 29, 77, 78, 79, 81, 90, 105, 124, 138, 139, 182

## Rwanda

**12 reports requested**

· No reports received: Conventions Nos. 26, 29, 42, 81, 87, 98, 100, 105, 122, 123, 138, 182

## Saint Kitts and Nevis

**5 reports requested**

· No reports received: Conventions Nos. 29, 105, 138, 182, MLC, 2006

## Saint Lucia

**18 reports requested**

· No reports received: Conventions Nos. 5, 7, 11, 12, 17, 19, 29, 87, 94, 97, 98, 100, 105, 108, 111, 154, 158, 182

## Saint Vincent and the Grenadines

**15 reports requested**

· 3 reports received: Conventions Nos. 81, 111, 129
· 12 reports not received: Conventions Nos. 11, 12, 19, 29, 100, 105, 108, 122, 138, 144, 182, MLC, 2006

## Samoa

**5 reports requested**

· 4 reports received: Conventions Nos. 29, 105, 138, 182
· 1 report not received: Convention No. MLC, 2006

## San Marino

**16 reports requested**

· 6 reports received: Conventions Nos. 98, 140, 148, 156, 159, 160
· 10 reports not received: Conventions Nos. 29, 87, 105, 119, 138, 142, 144, 151, 161, 182

## Sao Tome and Principe

**8 reports requested**

· No reports received: Conventions Nos. 29, 81, 87, 98, 105, 138, 182, (183)

## Saudi Arabia

**7 reports requested**

All reports received: Conventions Nos. 29, 81, 90, 105, 123, 138, 182

## Senegal

**9 reports requested**

All reports received: Conventions Nos. 87, 182
· 7 reports not received: Conventions Nos. 6, 10, 29, 81, 105, 138, 183

## Serbia

**9 reports requested**

· 4 reports received: Conventions Nos. 81, 129, 138, 144
· 5 reports not received: Conventions Nos. 29, 87, 90, 105, 182

## Seychelles

**6 reports requested**

· 5 reports received: Conventions Nos. 29, 81, 105, 138, 182
· 1 report not received: Convention No. MLC, 2006

## Sierra Leone

**24 reports requested**

· No reports received: Conventions Nos. 17, 19, 22, 26, 29, 32, 45, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 138, 144, 182

## Singapore

**10 reports requested**

· 2 reports received: Conventions Nos. 32, 138
· 8 reports not received: Conventions Nos. 19, 29, 81, 94, 98, 100, 144, 182

## Slovakia — 11 reports requested

All reports received: Conventions Nos. 29, 77, 78, 81, 90, 105, 123, 124, 129, 138, 182

## Slovenia — 9 reports requested

All reports received: Conventions Nos. 29, 81, 90, 105, 129, 138, 142, 182, MLC, 2006

## Solomon Islands — 7 reports requested

· 6 reports received: Conventions Nos. 29, 42, 98, 105, 138, 182
· 1 report not received: Convention No. 81

## Somalia — 15 reports requested

· 1 report received: Convention No. (182)
· 14 reports not received: Conventions Nos. 17, 19, 22, 23, 29, 45, 84, 85, 87, 94, 95, 98, 105, 111

## South Africa — 10 reports requested

· 1 report received: Convention No. MLC, 2006
· 9 reports not received: Conventions Nos. 29, 81, 87, 98, 105, 138, 182, 188, 189

## South Sudan — 7 reports requested

· No reports received: Conventions Nos. 29, 98, 100, 105, 111, 138, 182

## Spain — 12 reports requested

All reports received: Conventions Nos. 29, 77, 78, 79, 81, 90, 105, 123, 124, 129, 138, 182

## Sri Lanka — 9 reports requested

· 5 reports received: Conventions Nos. 81, 98, 105, 138, 182
· 4 reports not received: Conventions Nos. 29, 90, 185, (MLC, 2006)

## Sudan — 5 reports requested

· 4 reports received: Conventions Nos. 29, 105, 138, 182
· 1 report not received: Convention No. 81

## Suriname — 6 reports requested

All reports received: Conventions Nos. 29, 81, 100, 105, 111, 182

## Sweden — 6 reports requested

· All reports received: Conventions Nos. 29, 81, 105, 129, 138, 182

## Switzerland — 6 reports requested

· 1 report received: Convention No. 29
· 5 reports not received: Conventions Nos. 6, 81, 105, 138, 182

## Syrian Arab Republic — 9 reports requested

· No reports received: Conventions Nos. 29, 81, 105, 107, 123, 124, 129, 138, 182

## Tajikistan — 27 reports requested

· 22 reports received: Conventions Nos. 14, 29, 45, 47, 52, 81, 87, 95, 98, 106, 111, 115, 119, 120, 122, 138, 142, 148, 155, 160, 177, 182
· 5 reports not received: Conventions Nos. 97, 103, 105, 124, 149

## Thailand — 9 reports requested

· No reports received: Conventions Nos. 14, 19, 29, 105, 111, 127, 138, 182, 187

## Timor-Leste — 6 reports requested

· 4 reports received: Conventions Nos. 87, 98, (100), (111)
· 2 reports not received: Conventions Nos. 29, 182

## Togo

**13 reports requested**

· 3 reports received: Conventions Nos. 29, 138, 150
· 10 reports not received: Conventions Nos. 13, 14, 26, 81, 95, 102, 105, 129, 182, 187

## Trinidad and Tobago

**15 reports requested**

· 9 reports received: Conventions Nos. 19, 29, 81, 105, 122, 125, 138, 150, 182
· 6 reports not received: Conventions Nos. 87, 97, 98, 100, 111, 144

## Tunisia

**26 reports requested**

· No reports received: Conventions Nos. 12, 13, 14, 17, 18, 19, 26, 29, 45, 52, 62, 81, 89, 95, 99, 105, 106, 118, 119, 120, 127, 138, 142, 150, 182, (MLC, 2006)

## Turkey

**25 reports requested**

All reports received: Conventions Nos. 14, 26, 29, 42, 45, 81, 87, 95, 98, 99, 102, 105, 115, 118, 119, 127, 135, 138, 153, 155, 161, 167, 176, 182, 187

## Turkmenistan

**4 reports requested**

· No reports received: Conventions Nos. 29, 105, 138, 182

## Tuvalu

**1 report requested**

· No reports received: Convention No. MLC, 2006

## Uganda

**22 reports requested**

· No reports received: Conventions Nos. 11, 12, 17, 19, 26, 29, 45, 81, 87, 94, 95, 98, 100, 105, 111, 122, 123, 124, 138, 143, 162, 182

## Ukraine

**28 reports requested**

· 1 report received: Convention No. 102
· 27 reports not received: Conventions Nos. 14, 29, 45, 47, 81, 95, 103, 105, 106, 115, 119, 120, 129, 131, 132, 138, 139, 150, 153, 155, 160, 161, 173, 174, 176, 182, 184

## United Arab Emirates

**7 reports requested**

· No reports received: Conventions Nos. 1, 29, 81, 89, 105, 138, 182

## United Kingdom of Great Britain and Northern Ireland

**18 reports requested**

All reports received: Conventions Nos. 12, 17, 19, 24, 25, 29, 42, 81, 102, 105, 115, 120, 138, 148, 150, 160, 182, 187

## United Kingdom of Great Britain and Northern Ireland - Anguilla

**12 reports requested**

All reports received: Conventions Nos. 12, 14, 17, 19, 26, 29, 42, 85, 99, 101, 105, 148

## United Kingdom of Great Britain and Northern Ireland - Bermuda

**7 reports requested**

All reports received: Conventions Nos. 12, 17, 19, 29, 42, 105, 115

## United Kingdom of Great Britain and Northern Ireland - British Virgin Islands

**8 reports requested**

All reports received: Conventions Nos. 12, 14, 17, 19, 26, 29, 85, 105

## United Kingdom of Great Britain and Northern Ireland - Falkland Islands (Malvinas)

**9 reports requested**

All reports received: Conventions Nos. 12, 14, 17, 19, 29, 42, 45, 105, 182

## United Kingdom of Great Britain and Northern Ireland - Gibraltar

**11 reports requested**

All reports received: Conventions Nos. 12, 17, 19, 29, 42, 45, 81, 105, 150, 160, MLC, 2006

## United Kingdom of Great Britain and Northern Ireland - Guernsey

**14 reports requested**

All reports received: Conventions Nos. 12, 17, 19, 24, 25, 29, 42, 63, 81, 105, 115, 148, 150, 182

## United Kingdom of Great Britain and Northern Ireland - Isle of Man

**14 reports requested**

All reports received: Conventions Nos. 12, 17, 19, 24, 25, 29, 42, 81, 99, 101, 102, 105, 150, 160

## United Kingdom of Great Britain and Northern Ireland - Jersey

**12 reports requested**

All reports received: Conventions Nos. 12, 17, 19, 24, 25, 29, 42, 81, 99, 105, 115, 160

## United Kingdom of Great Britain and Northern Ireland - Montserrat

**10 reports requested**

All reports received: Conventions Nos. 12, 14, 17, 19, 26, 29, 42, 85, 95, 105

## United Kingdom of Great Britain and Northern Ireland - St. Helena

**10 reports requested**

All reports received: Conventions Nos. 12, 14, 17, 19, 29, 63, 85, 105, 150, 182

## United Republic of Tanzania

**15 reports requested**

· 13 reports received: Conventions Nos. 17, 19, 29, 63, 95, 105, 131, 138, 140, 142, 148, 170, 182
· 2 reports not received: Conventions Nos. 12, (185)

## United Republic of Tanzania - Tanganyika

**3 reports requested**

· No reports received: Conventions Nos. 45, 81, 101

## United Republic of Tanzania - Zanzibar

**1 report requested**

All reports received: Convention No. 85

## United States of America

**5 reports requested**

All reports received: Conventions Nos. 105, 150, 160, 176, 182

## Uruguay

**37 reports requested**

All reports received: Conventions Nos. 1, 13, 14, 19, 29, 30, 63, 81, 95, 98, 102, 103, 105, 106, 115, 118, 119, 120, 121, 128, 129, 130, 131, 132, 136, 138, 139, 148, 150, 153, 155, 161, 162, 167, 176, 182, 184

## Uzbekistan

**7 reports requested**

· No reports received: Conventions Nos. 29, 47, 52, 103, 105, 138, 182

## Vanuatu

**4 reports requested**

· No reports received: Conventions Nos. 29, 105, 182, 185

## Venezuela (Bolivarian Republic of)

**26 reports requested**

· 5 reports received: Conventions Nos. 26, 81, 87, 95, 144
· 21 reports not received: Conventions Nos. 1, 3, 13, 14, 19, 29, 45, 102, 105, 118, 120, 121, 127, 128, 130, 138, 139, 150, 153, 155, 182

## Viet Nam

**11 reports requested**

· 9 reports received: Conventions Nos. 14, 29, 45, 81, 120, 138, 155, 182, 187
· 2 reports not received: Conventions Nos. 122, MLC, 2006

## Yemen

**10 reports requested**

· No reports received: Conventions Nos. 14, 19, 29, 58, 81, 105, 132, 138, 182, 185

## Zambia

**20 reports requested**

· No reports received: Conventions Nos. 12, 17, 18, 19, 29, 81, 95, 103, 105, 129, 131, 136, 138, 148, 150, 155, 173, 176, 182, 187

## Zimbabwe

**19 reports requested**

All reports received: Conventions Nos. 14, 19, 26, 29, 81, 87, 98, 99, 105, 129, 138, 150, 155, 161, 162, 170, 174, 176, 182

## Grand Total

A total of 1,796 reports (article 22) were requested, of which 718 reports (39.98 per cent) were received.

A total of 208 reports (article 35) were requested, of which 141 reports (67.79 per cent) were received.

# Appendix II. Statistical table of reports received on ratified Conventions as at 12 December 2020

(article 22 of the Constitution)

| Year of the session of the Committee of Experts | Reports requested | Reports received at the date requested | | Reports registered for the session of the Committee of Experts | | Reports registered for the session of the Conference | |
|---|---|---|---|---|---|---|---|
| 1932 | 447 | - | | 406 | 90.8% | 423 | 94.6% |
| 1933 | 522 | - | | 435 | 83.3% | 453 | 86.7% |
| 1934 | 601 | - | | 508 | 84.5% | 544 | 90.5% |
| 1935 | 630 | - | | 584 | 92.7% | 620 | 98.4% |
| 1936 | 662 | - | | 577 | 87.2% | 604 | 91.2% |
| 1937 | 702 | - | | 580 | 82.6% | 634 | 90.3% |
| 1938 | 748 | - | | 616 | 82.4% | 635 | 84.9% |
| 1939 | 766 | - | | 588 | 76.8% | - | |
| 1944 | 583 | - | | 251 | 43.1% | 314 | 53.9% |
| 1945 | 725 | - | | 351 | 48.4% | 523 | 72.2% |
| 1946 | 731 | - | | 370 | 50.6% | 578 | 79.1% |
| 1947 | 763 | - | | 581 | 76.1% | 666 | 87.3% |
| 1948 | 799 | - | | 521 | 65.2% | 648 | 81.1% |
| 1949 | 806 | 134 | 16.6% | 666 | 82.6% | 695 | 86.2% |
| 1950 | 831 | 253 | 30.4% | 597 | 71.8% | 666 | 80.1% |
| 1951 | 907 | 288 | 31.7% | 507 | 77.7% | 761 | 83.9% |
| 1952 | 981 | 268 | 27.3% | 743 | 75.7% | 826 | 84.2% |
| 1953 | 1026 | 212 | 20.6% | 840 | 75.7% | 917 | 89.3% |
| 1954 | 1175 | 268 | 22.8% | 1077 | 91.7% | 1119 | 95.2% |
| 1955 | 1234 | 283 | 22.9% | 1063 | 86.1% | 1170 | 94.8% |
| 1956 | 1333 | 332 | 24.9% | 1234 | 92.5% | 1283 | 96.2% |
| 1957 | 1418 | 210 | 14.7% | 1295 | 91.3% | 1349 | 95.1% |
| 1958 | 1558 | 340 | 21.8% | 1484 | 95.2% | 1509 | 96.8% |
| **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% |

| Year of the session of the Committee of Experts | Reports requested | Reports received at the date requested | | Reports registered for the session of the Committee of Experts | | Reports registered for the session of the Conference | |
|---|---|---|---|---|---|---|---|
| **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% |
| 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 were 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% | 1852 | 72.1% |
| 2005 | 2638 | 696 | 26.4% | 1820 | 69.0% | 2065 | 78.3% |
| 2006 | 2586 | 745 | 28.8% | 1719 | 66.5% | 1949 | 75.4% |
| 2007 | 2478 | 845 | 34.1% | 1611 | 65.0% | 1812 | 73.2% |
| 2008 | 2515 | 811 | 32.2% | 1768 | 70.2% | 1962 | 78.0% |
| 2009 | 2733 | 682 | 24.9% | 1853 | 67.8% | 2120 | 77.6% |
| 2010 | 2745 | 861 | 31.4% | 1866 | 67.9% | 2122 | 77.3% |
| 2011 | 2735 | 960 | 35.1% | 1855 | 67.8% | 2117 | 77.4% |

| Year of the session of the Committee of Experts | Reports requested | Reports received at the date requested | | Reports registered for the session of the Committee of Experts | | Reports registered for the session of the Conference | |
|---|---|---|---|---|---|---|---|
| **As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals** | | | | | | | |
| 2012 | 2207 | 809 | 36.7% | 1497 | 67.8% | 1742 | 78.9% |
| 2013 | 2176 | 740 | 34.1% | 1578 | 72.5% | 1755 | 80.6% |
| 2014 | 2251 | 875 | 38.9% | 1597 | 70.9% | 1739 | 77.2% |
| 2015 | 2139 | 829 | 38.8% | 1482 | 69.3% | 1617 | 75.6% |
| 2016 | 2303 | 902 | 39.2% | 1600 | 69.5% | 1781 | 77.3% |
| 2017 | 2083 | 785 | 37.7% | 1386 | 66.5% | 1543 | 74.1% |
| 2018 | 1683 | 571 | 33.9% | 1038 | 61.7% | 1194 | 70.9% |
| **As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals** | | | | | | | |
| 2019 | 1788 | 645 | 36.1% | 1217 | 68.1% | ILC 2020 deferred due to the COVID-19 pandemic | |
| **In light of the deferral of 109th Session of the Conference to June 2021 due to the COVID-19 pandemic, the Governing Body decided in March 2020 to invite Member States to provide supplementary information on reports submitted in 2019, highlighting relevant developments, if any, on the application of the provisions of Conventions under review that might have occurred in the meantime. In addition, reports were requested on the basis of a footnote adopted by the Committee requesting a report for 2020 and on the follow-up of failures to submit reports** | | | | | | | |
| 2020 | 1796 | 394 | 21.9% | 718 | 40.0% | | |

# Appendix III. List of observations made by employers' and workers' organizations

## Albania

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 87, 98 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Algeria

| | on Conventions Nos |
|---|---|
| • General and Autonomous Confederation of Workers in Algeria (CGATA) | 98 |
| • General and Autonomous Confederation of Workers in Algeria (CGATA); National Autonomous Union of Public Administration Personnel (SNAPAP) | 87, 98 |
| • General and Autonomous Confederation of Workers in Algeria (CGATA); National Autonomous Union of Public Administration Personnel (SNAPAP); International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); Public Services International (PSI) | 87, 98 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • National Autonomous Union of Public Administration Personnel (SNAPAP) | 87, 98 |
| • Trade Union Confederation of Productive Workers (COSYFOP); IndustriALL Global Union (IndustriALL); International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); Public Services International (PSI) | 87, 98 |

## Antigua and Barbuda

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Argentina

| | on Conventions Nos |
|---|---|
| • Association of State Workers (ATE) | 151, 154 |
| • Confederation of Workers of Argentina (CTA Autonomous) | 87, 98, 111, 135, 144, 177 |
| • General Confederation of Labour of the Argentine Republic (CGT RA) | 87, 98, 144 |
| • Industrial Confederation of Argentina (UIA) | 87, 98, 135, 144, 154, 177 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Armenia

| | on Conventions Nos |
|---|---|
| • Confederation of Trade Unions of Armenia (CTUA) | 17, 18, 87, 98, 135, 144, 151, 154 |

## Australia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Bahamas

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Bahrain

| | on Convention No. |
|---|---|
| • General Federation of Bahrain Trade Unions (GFBTU) | 111 |

## Bangladesh

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 87, 98 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Barbados

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Belarus

| | on Conventions Nos |
|---|---|
| • Belarusian Congress of Democratic Trade Unions (BKDP) | 87, 98, 154 |
| • International Trade Union Confederation (ITUC) | 87 |

## Belgium

| | on Conventions Nos |
|---|---|
| • Federation of Enterprises in Belgium (FEB); International Organisation of Employers (IOE) | 98, 154 |
| • General Confederation of Liberal Trade Unions of Belgium (CGSLB); Confederation of Christian Trade Unions (CSC); General Labour Federation of Belgium (FGTB) | 87, 98, 151, 154 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • National Labour Council (CNT) | 144 |

## Belize

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Benin

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Bosnia and Herzegovina

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Botswana

| | on Conventions Nos |
|---|---|
| • Botswana Federation of Public, Private & Parastatal Sector Unions (BOFEPUSU); Botswana Federation of Trade Unions (BFTU) | 87, 98, 144, 151 |
| • International Trade Union Confederation (ITUC) | 87 |

## Brazil

| | on Conventions Nos |
|---|---|
| • Confederation of Brazilian Trade Unions (CSB); Union forces; Single Confederation of Workers (CUT) | 98, 151, 154 |
| • International Organisation of Employers (IOE) | 98 |
| • International Trade Union Confederation (ITUC) | 98 |
| • National Confederation of Education Workers (CNTE) | 98, 151, 154 |
| • National Confederation of Industry (CNI); International Organisation of Employers (IOE) | 98, 135, 144, 154 |
| • Public Services International (PSI) | 98, 144, 151, 154, 155 |
| • Single Confederation of Workers (CUT) | 98, 151, 169 |
| • Single Confederation of Workers (CUT); National Federation of Women Domestic Workers (FENATRAD); International Domestic Workers Federation (IDWF) | 189 |
| • Single Confederation of Workers (CUT); National Forum for the Prevention and Eradication of Child Labour (FNPETI); National Union of Labour Inspectors (SINAIT) | 138, 182 |

## Bulgaria

| | on Conventions Nos |
|---|---|
| • Bulgarian Industrial Association (BIA) | 87, 98, 131 |
| • Confederation of Labour (PODKREPA) | 87, 98 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • Union for Private Economic Enterprise (UPEE) | 87, 98, 144 |

## Burkina Faso

| | on Conventions Nos |
|---|---|
| • Trade Union Confederation of Burkina Faso (CSB) | 87, 98, 135, 144 |

## Burundi

| | on Conventions Nos |
|---|---|
| • Trade Union Confederation of Burundi (COSYBU) | 11, 26, 87, 98, 111, 135, 144 |

## Cabo Verde

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Cambodia

| | on Conventions Nos |
|---|---|
| • Education International (EI) | 87, 98 |
| • International Trade Union Confederation (ITUC) | 87, 98 |

## Cameroon

| | on Conventions Nos |
|---|---|
| • Cameroon National Seafarers Union (SYNIMAC) | 9, 108 |
| • General Union of Workers of Cameroon (UGTC) | 9, 16, 87, 98, 108, 146, 158 |
| • International Trade Union Confederation (ITUC) | 87, 98 |

## Canada

| | on Conventions Nos |
|---|---|
| • Canadian Labour Congress (CLC) | 87, 98, 144 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Chile

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 87 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • Single Central Organization of Workers of Chile (CUT-Chile) | 87, 98, 144, 187 |

## China

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 26, 111, 122 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## China - Hong Kong Special Administrative Region

| | on Conventions Nos |
|---|---|
| • Hong Kong Confederation of Trade Unions (HKCTU) | 87, 98 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 87, 98 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Colombia

| | on Conventions Nos |
|---|---|
| • International Trade Union Confederation (ITUC) | 87, 98 |
| • National Employers Association of Colombia (ANDI) | 87, 98, 144 |
| • Single Confederation of Workers of Colombia (CUT); Confederation of Workers of Colombia (CTC) | 87, 98, 144 |

## Congo

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Costa Rica

| | on Conventions Nos |
|---|---|
| • Confederation of Workers Rerum Novarum (CTRN) | 87, 98 |
| • Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) | 87 |
| • International Trade Union Confederation (ITUC) | 87 |
| • National Association of Criminal Investigators (ANIC) | 29, 89, 105, 111 |
| • National Association of Nursing Professionals (ANPE) | 87 |
| • National Association of Public and Private Sector Employees (ANEP); Juanito Mora Porras Trade Union Federation (CSJMP) | 98 |
| • Workers' Union of Banco Popular (SIBANPO) | 98 |

## Croatia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Cyprus

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Denmark

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Denmark (Faroe Islands)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Djibouti

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Dominican Republic

| | on Conventions Nos |
|---|---|
| • Autonomous Confederation of Workers' Unions (CASC); National Confederation of Dominican Workers (CNTD); National Confederation of Trade Union Unity (CNUS) | 87, 98, 102, 144 |

## Ecuador

| | on Conventions Nos |
|---|---|
| • Association of Paid Household Workers (ATRH) | 189 |
| • International Trade Union Confederation (ITUC) | 87 |
| • Public Services International (PSI) in Ecuador | 87, 98, 144 |
| • Trade Union Association of Agricultural, Banana and Peasant Workers (ASTAC) | 81, 87, 88, 98 |
| • Trade Union Association of Agricultural, Banana and Peasant Workers (ASTAC); Ecuadorean Confederation of Unitary Class Organizations of Workers (CEDOCUT) | 81, 87, 95, 98, 110, 131, 144 |

## Egypt

| | on Conventions Nos |
|---|---|
| • Bibliotheca Alexandrina Staff Union (BASU) ; Center for Trade Union and Workers Services (CUTWS); Egyptian Ambulance Organization Employees Syndicate ; Real Estate Taxes Authority Union (RETA); Public Services International (PSI) | 87, 98 |
| • International Trade Union Confederation (ITUC) | 87 |

## El Salvador

| | on Conventions Nos |
|---|---|
| • National Business Association (ANEP); International Organisation of Employers (IOE) | 87, 98, 144 |

## Estonia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Eswatini

| | on Conventions Nos |
|---|---|
| • International Trade Union Confederation (ITUC) | 87 |
| • Trade Union Congress of Swaziland (TUCOSWA) | 87, 98 |

## Ethiopia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Fiji

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 87 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Finland

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## France

| | on Conventions Nos |
|---|---|
| • CGT of Seafarers in the Great West ; National Federation of Maritime Trade Unions (FNSM); CGT Federal Union of Merchant Marine Pensioners and Widows (UFPVMM CGT) | MLC, 2006 |
| • French Confederation of Management – General Confederation of Professional and Managerial Employees (CFE-CGC) | 98 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## France (New Caledonia)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Gabon

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Gambia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Georgia

| | on Conventions Nos |
|---|---|
| • Georgian Trade Unions Confederation (GTUC) | 100, 111, 122 |

## Germany

| | on Conventions Nos |
|---|---|
| • German Confederation of Trade Unions (DGB) | 97, 100, 111, 122 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Ghana

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Greece

| | on Conventions Nos |
|---|---|
| • Hellenic Federation of Enterprises and Industries (SEV); International Organisation of Employers (IOE) | 98, 100, 111, 144, 150, 160 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Grenada

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Guatemala

| | on Conventions Nos |
|---|---|
| • Autonomous Popular Trade Union Movement; Global Unions of Guatemala | 87, 98, 100, 111, 122, 149, 169, 175 |
| • International Organisation of Employers (IOE); Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) | 122, 169, 175 |
| • International Trade Union Confederation (ITUC) | 87, 98 |

## Haiti

| | on Conventions Nos |
|---|---|
| • International Trade Union Confederation (ITUC) | 12, 17, 24, 25, 42, 87, 98 |
| • National Confederation of Educators of Haiti (CNEH); National Federation of Educational and Cultural Workers (FENATEC); National Federation of "Normaliens" of Haiti (UNNOH); National Federation of "Normaliens" and Educational Personnel of Haiti (UNNOEH); Education International (EI) | 87, 98 |

## Honduras

| | on Conventions Nos |
|---|---|
| • General Confederation of Workers (CGT); Workers' Confederation of Honduras (CTH) | 87, 100, 122, 169 |
| • Honduran National Business Council (COHEP) | 27, 29, 42, 81, 87, 100, 102, 105, 111, 122, 169 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 87 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Hungary

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Iceland

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## India

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 81 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Indonesia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Iran (Islamic Republic of)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Iraq

| | on Conventions Nos |
|---|---|
| • Conference of Iraq Federations and Workers Unions (CIFWU); Federation of Independent Trade and Professional Unions in Iraq (FITPUI); Federation of Workers' Councils and Unions in Iraq (FWCUI); General Federation of Iraqi Trade Unions (GFITU); General Federation of Trade Unions and Employees of Iraq (GFTUEI); General Federation of Trade Unions of the Republic of Iraq (GFTURI); General Federation of Workers Unions in Iraq (GFWUI); Iraqi Federation of Oil Unions (IFOU); Union of Technical Engineering Professionals (UTEP) | 87, 98 |
| • General Federation of Iraqi Trade Unions (GFITU) | 87, 98 |

## Ireland

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Italy

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Jamaica

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Japan

| | on Conventions Nos |
|---|---|
| • Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union) ; Rentai Union Suginami; Rentai Workers' Union, Itabashi-ku Section ; Union Rakuda (Kyoto Municipality Related Workers' Independent Union) | 87, 98 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • Japan Business Federation (NIPPON KEIDANREN) | 87, 100, 122, 156 |
| • Japanese Trade Union Confederation (JTUC-RENGO) | 122 |

## Jordan

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 98 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Kazakhstan

| | on Conventions Nos |
|---|---|
| • Confederation of Employers of Republic of Kazakhstan (KRRK) | 87 |
| • International Trade Union Confederation (ITUC) | 87, 100, 111 |

## Kenya

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Kiribati

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Kyrgyzstan

| | on Conventions Nos |
|---|---|
| • International Trade Union Confederation (ITUC) | 87, 98 |
| • Kyrgyzstan Federation of Trade Unions (FPK) | 81, 87, 98, 144 |

## Latvia

| | on Conventions Nos |
|---|---|
| • Free Trade Union Confederation of Latvia (FTUCL) | 100, 111, 122, 142 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Lebanon

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Liberia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • National Health Workers' Union of Liberia (NAHWUL) | 87, 98 |

## Lithuania

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Luxembourg

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Malaysia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Maldives

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Malta

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Marshall Islands

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Mauritius

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Mexico

| | on Conventions Nos |
|---|---|
| • Authentic Workers' Confederation of the Republic of Mexico (CAT) | 96, 100, 105, 110, 111, 140, 142, 144, 159, 172 |

## Mongolia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Montenegro

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Morocco

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Mozambique

| | on Convention No. |
|---|---|
| • National Public Service Union (SINAFP); Public Services International (PSI) | 98 |

## Myanmar

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Netherlands

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • National Federation of Christian Trade Unions (CNV); Netherlands Trade Union Confederation (FNV) | 100, 111, 122, 140, 142, 148, 159, 181 |

## Netherlands (Curaçao)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Netherlands (Sint Maarten)

| | on Conventions Nos |
|---|---|
| • Sint Maarten Hospitality & Trade Association (SHTA) | 87, 88, 144 |

## New Zealand

| | on Conventions Nos |
|---|---|
| • Business New Zealand | 82, 88, 100, 111, 122 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • New Zealand Council of Trade Unions (NZCTU) | 82, 88, 100, 111, 122 |

## Nicaragua

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Nigeria

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Norway

| | on Conventions Nos |
|---|---|
| • Confederation of Norwegian Enterprise (NHO) | 100 |
| • Confederation of Norwegian Enterprise (NHO); International Organisation of Employers (IOE) | 94, 111 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • Norwegian Confederation of Trade Unions (LO) | 94, 100, 111, 122 |

## Pakistan

| | on Conventions Nos |
|---|---|
| • International Transport Workers' Federation (ITF) | 87, 98 |

## Palau

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Panama

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • National Confederation of United Independent Unions (CONUSI) | 29, 81, 138, 182 |

## Peru

| | on Conventions Nos |
|---|---|
| • Autonomous Workers' Confederation of Peru (CATP) | 81 |
| • Single Confederation of Workers of Peru (CUT-Perú); General Confederation of Workers of Peru (CGTP); Autonomous Workers' Confederation of Peru (CATP); Confederation of Workers of Peru (CTP) | 29, 102, 105, 122, 138, 159, 182 |

## Philippines

| | on Conventions Nos |
|---|---|
| • Alliance of Concerned Teachers (ACT) ; National Alliance of Teachers and Office Workers (SMP-NATOW); Education International (EI) | 87, 98 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Trade Union Confederation (ITUC) | 87 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Poland

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Portugal

| | on Conventions Nos |
|---|---|
| • Confederation of Trade and Services of Portugal (CCSP) | 81, 187, 189 |
| • General Workers' Union (UGT) | 6, 29, 77, 78, 81, 105, 124, 129, 138, 182, 187, 189 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Republic of Korea

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • Korea Employers' Federation (KEF) | 111, 122, 156 |
| • Korean Confederation of Trade Unions (KCTU) | 100, 111 |

## Romania

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Russian Federation

| | on Conventions Nos |
|---|---|
| • Confederation of Labour of Russia (KTR) | 81 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Rwanda

| | on Convention No. |
|---|---|
| • International Trade Union Confederation (ITUC) | 98 |

## Saint Kitts and Nevis

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Saint Vincent and the Grenadines

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Samoa

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Senegal

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Serbia

| | on Conventions Nos |
|---|---|
| • Confederation of Autonomous Trade Unions of Serbia (CATUS) | 138, 144 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • Serbian Association of Employers (SAE) | 81, 129, 138 |

## Seychelles

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Singapore

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Slovakia

| | on Conventions Nos |
|---|---|
| • Association of Industrial Unions (AIU) | 26, 144 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Slovenia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Somalia

| | on Conventions Nos |
|---|---|
| • Federation of Somali Trade Unions (FESTU) | 87, 98 |

## South Africa

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Spain

| | on Conventions Nos |
|---|---|
| • General Union of Workers (UGT) | 29, 78, 81, 129, 138 |
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • Spanish Confederation of Employers' Organizations (CEOE) | 81, 129 |

## Sri Lanka

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Sudan

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Sweden

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Switzerland

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Thailand

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Togo

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Tunisia

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Turkey

| | on Conventions Nos |
|---|---|
| • Confederation of Public Employees' Trade Unions (KESK) | 87, 98, 111, 155, 161 |
| • Confederation of Public Servants Trade Unions (MEMUR-SEN) | 29, 42, 81, 87, 98, 155 |
| • Confederation of Turkish Trade Unions (TÜRK-IS) | 98, 100, 111 |
| • Education International (EI) | 87, 98 |
| • International Trade Union Confederation (ITUC) | 87, 155, 161, 167, 176, 187 |
| • Turkish Confederation of Employers' Associations (TISK) | 29, 81, 95, 98, 115, 119, 127, 155, 161, 167, 176, 187 |
| • Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) | 26 |

## Turkmenistan

| | on Conventions Nos |
|---|---|
| • International Trade Union Confederation (ITUC) | 105, 182 |

## Tuvalu

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Ukraine

| | on Conventions Nos |
|---|---|
| • Confederation of Free Trade Unions of Ukraine (KVPU); Federation of Trade Unions of Ukraine (FPU) | 95 |
| • Federation of Trade Unions of Ukraine (FPU) | 81, 102, 129, 131, 160, 173 |
| • International Trade Union Confederation (ITUC) | 95, 131, 155, 173, 176 |

## United Kingdom of Great Britain and Northern Ireland

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |
| • Trades Union Congress (TUC) | 29, 81, 182 |

## United Kingdom of Great Britain and Northern Ireland (Bermuda)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## United Kingdom of Great Britain and Northern Ireland (British Virgin Islands)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## United Kingdom of Great Britain and Northern Ireland (Cayman Islands)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas))

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## United Kingdom of Great Britain and Northern Ireland (Gibraltar)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## United Kingdom of Great Britain and Northern Ireland (Isle of Man)

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## United Republic of Tanzania

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## United States of America

| | on Convention No. |
|---|---|
| • American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) | 150 |

## Uruguay

| | on Conventions Nos |
|---|---|
| • National Chamber of Commerce and Services of Uruguay (CNCS); Chamber of Industries of Uruguay (CIU); International Organisation of Employers (IOE) | 98, 131, 144 |

## Uzbekistan

| | on Conventions Nos |
|---|---|
| • International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) | 29, 105 |

## Venezuela (Bolivarian Republic of)

| | on Conventions Nos |
|---|---|
| • Association of Retirees and Pensioners of Alcasa (AJUPAL); National Federation of Administrative Professionals and Technicians of the Universities of Venezuela (FENASIPRUV); Social Movement 10 "The Voice of SIDOR Workers" (MS10); SPT 7 Union of Education Professionals and Technicians of the State of Táchira | 26, 87, 95 |
| • Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP) | 26, 81, 87, 95, 144 |
| • Confederation of Workers of Venezuela (CTV) | 26, 29, 87, 95, 138, 144 |
| • Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS); International Organisation of Employers (IOE) | 26, 87, 144 |
| • Federation of University Teachers' Associations of Venezuela (FAPUV) | 87, 138, 182 |
| • Federation of Workers of the State of Bolivar (FETRA-BOLIVAR) | 87 |
| • General Confederation of Labour (CGT); Confederation of Autonomous Trade Unions (CODESA); National Union of Workers of Venezuela (UNETE) | 26, 87, 144 |
| • Independent Trade Union Alliance Confederation of Workers (CTASI) | 1, 26, 29, 81, 87, 95, 102, 105, 130, 144, 182 |
| • Independent Trade Union Alliance Confederation of Workers (CTASI); Confederation of Workers of Venezuela (CTV); Federation of University Teachers' Associations of Venezuela (FAPUV) | 87 |
| • Independent Trade Union Alliance Confederation of Workers (CTASI); Federation of University Teachers' Associations of Venezuela (FAPUV) | 26, 29, 81, 95, 138, 182 |
| • Independent Trade Union Alliance Confederation of Workers (CTASI); National Union of Men and Women Public Officials in the Legislative Career Stream, and Men and Women Workers at the National Assembly (SINFUCAN) | 26, 87, 95 |
| • MOV7 The Voice of Alcasa | 87 |

## Viet Nam

| | on Conventions Nos |
|---|---|
| • International Chamber of Shipping (ICS) | MLC, 2006 |
| • International Transport Workers' Federation (ITF) | MLC, 2006 |

## Zimbabwe

| | on Conventions Nos |
|---|---|
| • International Trade Union Confederation (ITUC) | 87, 155, 161, 176 |
| • Zimbabwe Congress of Trade Unions (ZCTU) | 14, 26, 29, 81, 87, 98, 99, 105, 129, 138, 150, 182 |

# Appendix IV. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7 that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specific time 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.

In accordance with article 23 of the Constitution, a summary of the information communicated by Member States in accordance with article 19 is submitted to the Conference.

At its 267th Session (November 1996), the Governing Body approved new measures to rationalize and simplify proceedings. As a result, the summarized information is presented in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The following summary contains the most recent information on the submission to the competent authorities of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted at the 103rd Session of the Conference (June 2014), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted at the 104th Session of the Conference (June 2015), as well as the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session (June 2017), and the Violence and Harassment Convention, 2019 (No. 190), and the Violence and Harassment Recommendation 2019 (No. 206), adopted at the 108th Session of the Conference (June 2019).

The summarized information includes communications that were forwarded to the Director-General of the International Labour Office after the closure of the 108th Session of the Conference (June 2019) and which could not therefore be laid before the Conference at that session.

***Azerbaijan.*** Convention No. 190 and Recommendation No. 206 were submitted to the Parliament *(Milli Majlis)* on 4 November 2019.

***Barbados.*** Convention No. 190 and Recommendation No. 206 were submitted to the Parliament on 21 July 2020.

***Belgium.*** The Government declaration, the texts of Convention No. 190 and Recommendation No. 206 and the opinion of the National Labour Council were transmitted to the Parliament on 2 July 2020.

***Canada.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the House of Commons on 9 October 2020 and to the Senate on 14 October 2020.

***Costa Rica.*** The Government submitted the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) to the Legislative Assembly on 23 March 2019.

***Estonia.*** Convention No. 190 and Recommendation No. 206 were submitted to the Estonian Parliament *(Riigikogu)* on 9 December 2019.

***Finland.*** Convention No. 190 and Recommendation No. 206 were submitted to the Finnish Parliament *(Riggikogu*) on 5 February 2020.

***France.*** Recommendation No. 205 was submitted to the National Assembly on 5 February 2020.

***Guatemala.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the National Congress on 11 June 2020.

***Iceland.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the Icelandic Parliament *(Althing)* on 20 January 2020. The Government indicated that it has recommended the ratification of Convention No. 190.

***Indonesia.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the House of People Representative of the Republic of Indonesia (DPR-RI) on 9 June 2020.

***Israel.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the Knesset on 19 August 2020.

***Japan.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the Diet on 12 June 2020. The Government indicates that it is undertaking an analysis of the domestic legislation with a view to possible ratification of the Convention.

***Kiribati.*** The Government submitted the following instruments to the Parliament on 30 August 2019: the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203); the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203); the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204); the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205); the Violence and Harassment Convention, 2019 (No. 190); and the Violence and Harassment Recommendation, 2019 (No. 206).

***Latvia.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the Latvian Parliament on 17 October 2019.

***Morocco.*** The Government submitted Convention No. 190 and Recommendation No. 206 to its National Assembly on 1 October 2019.

***Myanmar.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the fifth day meeting of the 17th regular session of the second *Pyidaungsu Hluttaw* held on 24 July 2020.

***New Zealand.*** Convention No. 190 and Recommendation No. 206 were submitted to the New Zealand House of Representatives on 23 October 2019.

***Niger.*** Convention No. 190 and Recommendation No. 206 were submitted to the National Assembly on 9 January 2020.

***Senegal.*** Convention No. 190 and Recommendation No. 206 were submitted to the National Assembly on 9 January 2020.

***Slovakia.*** Convention No. 190 and Recommendation No. 206 were submitted to the National Council on 26 November 2019.

***Slovenia.*** Convention No. 190 and Recommendation No. 206 were submitted to the National Assembly on 17 December 2019.

***Trinidad and Tobago.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the House of Representatives on 13 March 2020 and to the Senate on 17 March 2020.

***Turkey.*** Convention No. 190 and Recommendation No. 206 were submitted to the Grand National Assembly on 12 December 2019.

***United States of America.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the Senate and House of Representatives on 9 October 2020.

***Uzbekistan.*** The Government submitted Convention No. 190 and Recommendation No. 206 to the *Oliy Majlis* on 24 March 2020.

# Appendix V. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities
## (31st to 108th Sessions of the International Labour Conference, 1948–2019)

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.

Account has been taken of the date of admission or readmission of member States to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972), 73rd Session (June 1987), 93rd Session (June 2005), 97th Session (June 2008), 98th Session (June 2009), 102nd Session (June 2013), 105th Session (June 2016) and 107th Session (June 2018).

| | 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, 58-72, 74-92, 94-96, 99-101, 103 | **104, 106, 108** |
| **Albania** | 79-81, 82 (C176, R183), 83, 84 (C178, P147, R186), 85, 87, 88, 90 (P155), 91, 94, 95 (C187, R197) | **78, 82 (P081), 84 (C179, C180, R185, R187), 86, 89, 90 (R193, R194), 92, 95 (R198), 96, 99-101, 103, 104, 106, 108** |
| **Algeria** | 47-56, 58-72, 74-92, 94-96, 99-101, 103 | **104, 106, 108** |
| **Angola** | 61-72, 74-78, 79 (C173), 80, 81, 82 (R183, C176), 83-85, 87-90, 96 | **79 (R180), 82 (P081), 86, 91, 92, 94, 95, 99-101, 103, 104, 106, 108** |
| **Antigua and Barbuda** | 68-72, 74-82, 84, 87, 94, 100 | **83, 85, 86, 88-92, 95, 96, 99, 101, 103, 104, 106, 108** |
| **Argentina** | 31-56, 58-72, 74-90, 92, 94-96, 99-101, 103 | **91, 104, 106, 108** |
| **Armenia** | 80-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Australia** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |

| | 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)** |
|---|---|---|
| **Austria** | 31-56, 58-72, 74-92, 94-96, 99, 101, 103 (P029) | **100, 103 (R203), 104, 106, 108** |
| **Azerbaijan** | 79-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Bahamas** | 61-72, 74-84, 87, 91, 94 | **85, 86, 88-90, 92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Bahrain** | 63-72, 74-87 | **88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Bangladesh** | 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Barbados** | 51-56, 58-72, 74-92, 94-96, 99-101, 108 | **103, 104, 106** |
| **Belarus** | 37-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Belgium** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Belize** | 68-72, 74-76, 84, 87, 88, 94 | **77-83, 85, 86, 89-92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Benin** | 45-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Bolivia (Plurinational State of)** | 31-56, 58-72, 74-79, 80 (C174), 81 (C175), 82 (C176), 83 (C177), 84 (C178, C179, C180), 85 (C181), 87, 88 (C183), 89 (C184), 91, 100 | **80 (R181), 81 (R182), 82 (P081, R183), 83 (R184), 84 (P147, R185, R186, R187), 85 (R188), 86, 88 (R191), 89 (R192), 90, 92, 94-96, 99, 101, 103, 104, 106, 108** |
| **Bosnia and Herzegovina** | 80-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Botswana** | 64-72, 74-92, 94-96, 99, 100 | **101, 103, 104, 106, 108** |

| | 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)** |
|---|---|---|
| **Brazil** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Brunei Darussalam** | | **96, 99-101, 103, 104, 106, 108** |
| **Bulgaria** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 106 | **104, 108** |
| **Burkina Faso** | 45-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 104 | **103 (R203), 106, 108** |
| **Burundi** | 47-56, 58-72, 74-92, 95, 96, 99-101, 103, 104, 106 | **94, 108** |
| **Cabo Verde** | 65-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Cambodia** | 53-56, 58-72, 74-92, 94-96, 99-101, 103 (R203), 104 | **103 (P029), 106, 108** |
| **Cameroon** | 44-56, 58-72, 74-92, 94-96, 101, 108 | **99, 100, 103, 104, 106** |
| **Canada** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Central African Republic** | 45-56, 58-72, 74-92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Chad** | 45-56, 58-72, 74-92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Chile** | 31-56, 58-72, 74-82, 84 (C178, C179, C180, P147), 87, 94, 95 (C187, R197), 100 | **83, 84 (R185, R186, R187), 85, 86, 88-92, 95 (R198), 96, 99, 101, 103, 104, 106, 108** |
| **China** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |

| | 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)** |
|---|---|---|
| **Colombia** | 31-56, 58-72, 74-92, 94-96, 99-101, 103 | **104, 106, 108** |
| **Comoros** | 65-72, 74-78, 87 | **79-86, 88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Congo** | 45-53, 54 (C131, C132), 55, 56, 58 (C138, R146), 59, 60 (C142, R150), 61, 62, 63 (C148, C149, R157), 64-66, 67 (C154, C155, C156), 68 (C158), 71 (C160, C161), 74, 75 (C167, C168), 76, 84, 87, 91, 94, 96 | **54 (R135, R136), 58 (C137, R145), 60 (C141, C143, R149, R151), 63 (R156), 67 (R163, R164, R165), 68 (C157, P110, R166), 69, 70, 71 (R170, R171), 72, 75 (R175, R176), 77-83, 85, 86, 88-90, 92, 95, 99-101, 103, 104, 106, 108** |
| **Cook Islands** | 104, 106 | **108** |
| **Costa Rica** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Côte d'Ivoire** | 45-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Croatia** | 80-85, 87, 91, 94 | **86, 88-90, 92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Cuba** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Cyprus** | 45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Czechia** | 80-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Democratic Republic of the Congo** | 45-56, 58-72, 74-92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Denmark** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Djibouti** | 64-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |

| | 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)** |
|---|---|---|
| **Dominica** | | |
| | 68-72, 74-79, 87 | **80-86, 88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Dominican Republic** | | |
| | 31-56, 58-72, 74-92, 94, 95, 99, 100 | **96, 101, 103, 104, 106, 108** |
| **Ecuador** | | |
| | 31-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 104 | **103 (R203), 106, 108** |
| **Egypt** | | |
| | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **El Salvador** | | |
| | 31-56, 58-61, 63 (C149), 64, 67 (R164, R165, C155, C156), 69 (R168, C159), 71, 72, 74-81, 87, 90 (P155) | **62, 63 (R156, R157, C148), 65, 66, 67 (R163, C154), 68, 69 (R167), 70, 82-86, 88, 89, 90 (R193, R194), 91, 92, 94-96, 99-101, 103, 104, 106, 108** |
| **Equatorial Guinea** | | |
| | 67-72, 74-79, 84, 87 | **80-83, 85, 86, 88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Eritrea** | | |
| | 80-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Estonia** | | |
| | 79-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Eswatini** | | |
| | 60-72, 74-92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Ethiopia** | | |
| | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Fiji** | | |
| | 59-72, 74-82, 84, 85, 87, 89, 90 (P155), 92, 94, 108 (C190) | **83, 86, 88, 90 (R193, R194), 91, 95, 96, 99-101, 103, 104, 106, 108 (R206)** |
| **Finland** | | |
| | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **France** | | |
| | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |

| | 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)** |
|---|---|---|
| **Gabon** | 45-56, 58-72, 74-81, 82 (C176), 83 (C177), 84, 85 (C181), 87, 89 (C184), 91, 94 | **82 (P081, R183), 83 (R184), 85 (R188), 86, 88, 89 (R192), 90, 92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Gambia** | 82-92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Georgia** | 80-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Germany** | 34-56, 58-72, 74-76, 77 (C170, R177), 78-92, 94-96, 99-101, 103 (P029), 104, 106 | **77 (C171, P089, R178), 103 (R203), 108** |
| **Ghana** | 40-56, 58-72, 74-92, 94-96, 99-101, 104 | **103, 106, 108** |
| **Greece** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Grenada** | 66-72, 74-92, 94, 95, 100 (C189) | **96, 99, 100 (R201), 101, 103, 104, 106, 108** |
| **Guatemala** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Guinea** | 43-56, 58-72, 74-83, 87, 95 (R197, C187), 100 | **84-86, 88-92, 94, 95 (R198), 96, 99, 101, 103, 104, 106, 108** |
| **Guinea - Bissau** | 63-72, 74-88, 94, 106 | **89-92, 95, 96, 99-101, 103, 104, 108** |
| **Guyana** | 50-56, 58-72, 74-92, 94, 95, 100 | **96, 99, 101, 103, 104, 106, 108** |
| **Haiti** | 31-56, 58-66, 67 (C156, R165), 69-72, 74, 75 (C167), 87 | **67 (C154, C155, R163, R164), 68, 75 (C168, R175, R176), 76-86, 88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Honduras** | 38-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |

| | 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)** |
|---|---|---|
| **Hungary** | 31-56, 58-72, 74-92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Iceland** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **India** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Indonesia** | 33-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Iran (Islamic Republic of)** | 31-56, 58-72, 74-89, 90 (R193, R194), 91, 92, 94-96, 100, 101, 103, 104, 106, 108 | **90 (P155), 99** |
| **Iraq** | 31-56, 58-72, 74-87, 88 (C183), 89, 90 (P155), 91, 94, 95 (C187, R197), 96 (C188), 100 (C189) | **88 (R191), 90 (R193, R194), 92, 95 (R198), 96 (R199), 99, 100 (R201), 101, 103, 104, 106, 108** |
| **Ireland** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Israel** | 32-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Italy** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Jamaica** | 47-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Japan** | 35-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Jordan** | 39-56, 58-72, 74-92, 94-96, 99-101, 103 | **104, 106, 108** |
| **Kazakhstan** | 82 (C176, R183), 87, 88, 91 | **80, 81, 82 (P081), 83-86, 89, 90, 92, 94-96, 99-101, 103, 104, 106, 108** |

| | 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)** |
|---|---|---|
| **Kenya** | 48-56, 58-72, 74-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Kiribati** | 88-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Kuwait** | 45-56, 58-72, 74-76, 78, 79, 80 (C174), 81-85, 87, 88, 90, 91 | **77, 80 (R181), 86, 89, 92, 94-96, 99-101, 103, 104, 106, 108** |
| **Kyrgyzstan** | 87, 89, 103 (P029) | **79-86, 88, 90-92, 94-96, 99-101, 103 (R203), 104, 106, 108** |
| **Lao People's Democratic Republic** | 48-56, 58-72, 74-81, 82 (R183, C176), 83-92, 94-96, 99, 100, 103 | **82 (P081), 101, 104, 106, 108** |
| **Latvia** | 79-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Lebanon** | 32-56, 58-72, 74-92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Lesotho** | 66-72, 74-92, 94-96, 100, 101, 103 (P029), 104 | **99, 103 (R203), 106, 108** |
| **Liberia** | 31-56, 58-72, 74-76, 77 (C170, C171, R177, R178), 78-81, 82 (C176, R183), 83-87, 91, 94 | **77 (P089), 82 (P081), 88-90, 92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Libya** | 35-56, 58-72, 74-82, 87 | **83-86, 88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Lithuania** | 79-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Luxembourg** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Madagascar** | 45-56, 58-72, 74-91, 94-96, 100, 103 (P029) | **92, 99, 101, 103 (R203), 104, 106, 108** |

| | 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)** |
|---|---|---|
| **Malawi** | 49-56, 58-72, 74-92, 94-96, 103 (P029) | **99-101, 103 (R203), 104, 106, 108** |
| **Malaysia** | 41-56, 58-72, 74-92, 94, 95 (C187, R197) | **95 (R198), 96, 99-101, 103, 104, 106, 108** |
| **Maldives** | | **99-101, 103, 104, 106, 108** |
| **Mali** | 45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Malta** | 49-56, 58-72, 74-92, 94, 95, 103 (P029) | **96, 99-101, 103 (R203), 104, 106, 108** |
| **Marshall Islands** | | **99-101, 103, 104, 106, 108** |
| **Mauritania** | 45-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Mauritius** | 53-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Mexico** | 31-56, 58-72, 74-92, 94, 95 (R198), 99, 100 (C189), 101, 106 | **95 (C187, R197), 96, 100 (R201), 103, 104, 108** |
| **Mongolia** | 52-56, 58-72, 74-81, 82 (C176, R183), 83-92, 94-96, 99-101 | **82 (P081), 103, 104, 106, 108** |
| **Montenegro** | 96, 99-101, 103, 104, 106 | **108** |
| **Morocco** | 39-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Mozambique** | 61-72, 74-82, 87, 103 (P029), 104, 106 | **83-86, 88-92, 94-96, 99-101, 103 (R203), 108** |

| | 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)** |
|---|---|---|
| **Myanmar** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Namibia** | 65-72, 74-92, 94-96, 99-101, 103 (P029), 104, 106, 108 (C190) | **103 (R203), 108 (R206)** |
| **Nepal** | 51-56, 58-72, 74-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Netherlands** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **New Zealand** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Nicaragua** | 40-56, 58-72, 74-92, 94-96, 99-101, 103 | **104, 106, 108** |
| **Niger** | 45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Nigeria** | 45-56, 58-72, 74-92, 94, 95, 100, 104 | **96, 99, 101, 103, 106, 108** |
| **North Macedonia** | 80-83, 85, 87, 88, 95 (C187, R197) | **84, 86, 89-92, 94, 95 (R198), 96, 99-101, 103, 104, 106, 108** |
| **Norway** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Oman** | 81-92, 95 (R197, R198), 99 | **94, 95 (C187), 96, 100, 101, 103, 104, 106, 108** |
| **Pakistan** | 31-56, 58-72, 74-80, 87, 91 | **81-86, 88-90, 92, 94-96, 99-101, 103, 104, 106, 108** |
| **Palau** | | **101, 103, 104, 106, 108** |

| | 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)** |
|---|---|---|
| **Panama** | 31-56, 58-72, 74-87, 88 (R191), 89 (R192), 90 (R193, R194), 92, 94, 95 (R197, R198), 96 (R199), 99-101, 103, 104, 106 | **88 (C183), 89 (C184), 90 (P155), 91, 95 (C187), 96 (C188), 108** |
| **Papua New Guinea** | 61-72, 74-87 | **88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Paraguay** | 40-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Peru** | 31-56, 58-72, 74-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Philippines** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Poland** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Portugal** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Qatar** | 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Republic of Korea** | 79-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Republic of Moldova** | 79-91, 95 (C187, R197), 104 | **92, 94, 95 (R198), 96, 99-101, 103, 106, 108** |
| **Romania** | 39-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Russian Federation** | 37-56, 58-72, 74-88, 91, 94, 95 (C187, R197), 103, 104 | **89, 90, 92, 95 (R198), 96, 99-101, 106, 108** |
| **Rwanda** | 47-56, 58-72, 74-79, 81, 85, 87, 95 (C187, R197) | **80, 82-84, 86, 88-92, 94, 95 (R198), 96, 99-101, 103, 104, 106, 108** |

| | 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)** |
|---|---|---|
| **Saint Kitts and Nevis** | | |
| | 84, 87, 94 | **83, 85, 86, 88-92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Saint Lucia** | | |
| | 67 (C154, R163), 68 (C158, R166), 87 | **66, 67 (C155, C156, R164, R165), 68 (C157, P110), 69-72, 74-86, 88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Saint Vincent and the Grenadines** | | |
| | 84, 86, 87, 94 | **82, 83, 85, 88-92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Samoa** | | |
| | 94-96, 99-101, 103, 104, 106 | **108** |
| **San Marino** | | |
| | 68-72, 74-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Sao Tome and Principe** | | |
| | 68-72, 74-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Saudi Arabia** | | |
| | 61-72, 74-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **Senegal** | | |
| | 45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Serbia** | | |
| | 89-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Seychelles** | | |
| | 63-72, 74-88, 94 | **89-92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Sierra Leone** | | |
| | 45-56, 58-61, 62 (C145, C147, R153, R155) | **62 (C146, R154), 63-72, 74-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Singapore** | | |
| | 50-56, 58-72, 74-92, 94-96, 99-101, 104 | **103, 106, 108** |
| **Slovakia** | | |
| | 80-92, 94-96, 99-101, 103, 104, 106 | **108** |

| | 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)** |
|---|---|---|
| **Slovenia** | 79-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Solomon Islands** | 74, 87 | **70-72, 75-86, 88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **Somalia** | 45-56, 58-72, 74, 75, 87 | **76-86, 88-92, 94-96, 99-101, 103, 104, 106, 108** |
| **South Africa** | 81, 82 (C176, R183), 83-92, 94-96, 99-101 | **103, 104, 106, 108** |
| **South Sudan** | | **101, 103, 104, 106, 108** |
| **Spain** | 39-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Sri Lanka** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Sudan** | 39-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Suriname** | 61-72, 74-92, 94-96, 99-101, 103 | **104, 106, 108** |
| **Sweden** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Switzerland** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Syrian Arab Republic** | 31-56, 58-65, 67, 68, 69 (C159, R167), 71, 72, 74-76, 77 (C170, R177), 84, 87-89, 90 (P155), 94 | **66, 69 (R168), 70, 77 (C171, P089, R178), 78-83, 85, 86, 90 (R193, R194), 91, 92, 95, 96, 99-101, 103, 104, 106, 108** |
| **Tajikistan** | 81-92, 94-96, 99-101, 103 (P029) | **103 (R203), 104, 106, 108** |

| | 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)** |
|---|---|---|
| **Thailand** | 31-56, 58-72, 74-92, 94-96, 99, 100 (R201), 101, 103, 104 | **100 (C189), 106, 108** |
| **Timor-Leste** | 92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Togo** | 44-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Tonga** | | **106, 108** |
| **Trinidad and Tobago** | 47-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Tunisia** | 39-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Turkey** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Turkmenistan** | 81-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **Tuvalu** | | **99-101, 103, 104, 106, 108** |
| **Uganda** | 47-56, 58-72, 74-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Ukraine** | 37-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **United Arab Emirates** | 58-72, 74-92, 95, 96 | **94, 99-101, 103, 104, 106, 108** |
| **United Kingdom of Great Britain and Northern Ireland** | 31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |

| | 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)** |
|---|---|---|
| **United Republic of Tanzania** | 46-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |
| **United States of America** | 66-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Uruguay** | 31-56, 58-72, 74-89, 90 (R193, R194), 91, 92, 95 (R197, R198), 99-101, 103 (R203), 104, 108 (C190) | **90 (P155), 94, 95 (C187), 96, 103 (P029), 106, 108 (R206)** |
| **Uzbekistan** | 80-92, 94-96, 99-101, 103, 104, 106, 108 | |
| **Vanuatu** | | **91, 92, 94-96, 99-101, 103, 104, 106, 108** |
| **Venezuela (Bolivarian Republic of)** | 41-56, 58-72, 74-92, 94-96, 99-101, 103 | **104, 106, 108** |
| **Viet Nam** | 79-92, 94-96, 99-101, 103, 104 | **106, 108** |
| **Yemen** | 49-56, 58-72, 74-87, 88 (C183), 89 (C184), 91, 95 (C187) | **88 (R191), 89 (R192), 90, 92, 94, 95 (R197, R198), 96, 99-101, 103, 104, 106, 108** |
| **Zambia** | 49-56, 58-72, 74-92, 94-96 | **99-101, 103, 104, 106, 108** |
| **Zimbabwe** | 66-72, 74-92, 94-96, 99-101, 103, 104, 106 | **108** |

# Appendix VI. Overall position of member States with regard to the submission to the competent authorities of the instruments adopted by the Conference
(as at 12 December 2020)

| Sessions of the ILC | Number of States in which, according to the information supplied by the Government: | | | Number of ILO member States at the time of the session |
|---|---|---|---|---|
| | All the instruments have been submitted | Some of the instruments have been submitted | None of the instruments have been submitted | |
| *All the instruments adopted between the 31st and the 53rd Sessions have been submitted to the competent authorities by member States* | | | | |
| **54th** (June 1970) | 119 | 1 | 0 | **120** |
| **55th** (October 1970) | 120 | 0 | 0 | **120** |
| **56th** (June 1971) | 120 | 0 | 0 | **120** |
| **58th** (June 1973) | 122 | 1 | 0 | **123** |
| **59th** (June 1974) | 125 | 0 | 0 | **125** |
| **60th** (June 1975) | 125 | 1 | 0 | **126** |
| **61st** (June 1976) | 131 | 0 | 0 | **131** |
| **62nd** (October 1976) | 129 | 1 | 1 | **131** |
| **63rd** (June 1977) | 131 | 2 | 1 | **134** |
| **64th** (June 1978) | 134 | 0 | 1 | **135** |
| **65th** (June 1979) | 135 | 0 | 2 | **137** |
| **66th** (June 1980) | 138 | 0 | 4 | **142** |
| **67th** (June 1981) | 138 | 4 | 1 | **143** |
| **68th** (June 1982) | 142 | 2 | 3 | **147** |
| **69th** (June 1983) | 143 | 2 | 3 | **148** |
| **70th** (June 1984) | 143 | 0 | 6 | **149** |
| **71st** (June 1985) | 145 | 1 | 3 | **149** |
| **72nd** (June 1986) | 145 | 0 | 4 | **149** |
| **74th** (October 1987) | 147 | 0 | 2 | **149** |
| **75th** (June 1988) | 144 | 2 | 3 | **149** |
| **76th** (June 1989) | 142 | 0 | 5 | **147** |
| **77th** (June 1990) | 136 | 3 | 8 | **147** |
| **78th** (June 1991) | 140 | 0 | 9 | **149** |
| **79th** (June 1992) | 145 | 1 | 10 | **156** |
| **80th** (June 1993) | 151 | 2 | 14 | **167** |
| **81st** (June 1994) | 156 | 1 | 14 | **171** |
| **82nd** (June 1995) | 148 | 9 | 16 | **173** |
| **83rd** (June 1996) | 149 | 2 | 23 | **174** |
| **84th** (October 1996) | 155 | 3 | 16 | **174** |
| **85th** (June 1997) | 149 | 2 | 23 | **174** |
| **86th** (June 1998) | 143 | 0 | 31 | **174** |
| **87th** (June 1999) | 173 | 0 | 1 | **174** |
| **88th** (June 2000) | 144 | 4 | 27 | **175** |
| **89th** (June 2001) | 139 | 4 | 32 | **175** |
| **90th** (June 2002) | | | | |

| Sessions of the ILC | | Number of States in which, according to the information supplied by the Government: | | | Number of ILO member States at the time of the session |
|---|---|---|---|---|---|
| | | All the instruments have been submitted | Some of the instruments have been submitted | None of the instruments have been submitted | |
| **90th** | (June 2002) | 134 | 8 | 33 | **175** |
| **91st** | (June 2003) | 146 | 0 | 30 | **176** |
| **92nd** | (June 2004) | 135 | 0 | 42 | **177** |
| **94th** | (February 2006) | 149 | 0 | 29 | **178** |
| **95th** | (June 2006) | 131 | 14 | 33 | **178** |
| **96th** | (June 2007) | 127 | 2 | 49 | **178** |
| **99th** | (June 2010) | 117 | 0 | 66 | **183** |
| **100th** | (June 2011) | 122 | 4 | 57 | **183** |
| **101st** | (June 2012) | 116 | 0 | 69 | **185** |
| **103rd** | (June 2014) | 93 | 14 | 78 | **185** |
| **104th** | (June 2015) | 96 | 0 | 90 | **186** |
| **106th** | (June 2017) | 74 | 0 | 113 | **187** |
| **108th** | (June 2019) | 28 | 3 | 156 | **187** |

# 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.*

| | |
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| **Afghanistan** | *General direct request*<br>**Observations on Conventions Nos 100, 111**<br>*Direct requests on Conventions Nos 111, 140, 141, 142, 144*<br>*Direct request on submission* |
| **Albania** | **Observations on Conventions Nos 81, 87, 98, 129**<br>*Direct requests on Conventions Nos 81, 100, 111, 129, 141, 144, 151, 154, 177*<br>**Observation on submission** |
| **Algeria** | **Observations on Conventions Nos 87, 98**<br>*Direct request on Convention No. 87* |
| **Angola** | **Observation on Convention No. 98**<br>*Direct requests on Conventions Nos 81, 87, 98, 100, 188*<br>**Observation on submission** |
| **Antigua and Barbuda** | *General direct request*<br>**Observations on Conventions Nos 144, 151**<br>*Direct requests on Conventions Nos 81, 87, 135*<br>**Observation on submission** |
| **Argentina** | **Observations on Conventions Nos 87, 154, 177**<br>*Direct requests on Conventions Nos 98, 111, 144, 177, 188*<br>*Direct request on submission* |
| **Armenia** | **Observations on Conventions Nos 17, 87, 98**<br>*Direct requests on Conventions Nos 18, 144*<br>*Direct request on submission* |
| **Australia** | **Observations on Conventions Nos 87, 98**<br>*Direct requests on Conventions Nos 87, 98*<br>*Direct request on submission* |
| **Austria** | *Direct request on submission* |
| **Azerbaijan** | *Direct requests on Conventions Nos 132, 144* |
| **Bahamas** | **Observations on Conventions Nos 87, 98**<br>*Direct requests on Conventions Nos 87, 144, 186*<br>**Observation on submission** |
| **Bahrain** | **Observation on submission** |
| **Bangladesh** | *General direct request*<br>**Observations on Conventions Nos 81, 87, 98, 144**<br>*Direct request on Convention No. 81*<br>*Direct request on submission* |
| **Barbados** | *General direct request*<br>**Observations on Conventions Nos 87, 97, 100, 111**<br>*Direct requests on Conventions Nos 81, 87, 97, 100, 102, 105, 111, 122, 128, 144*<br>*Response received to a direct request on Convention No. 118*<br>*Direct request on submission* |
| **Belarus** | *General direct request*<br>**Observations on Conventions Nos 87, 98**<br>*Direct request on submission* |
| **Belgium** | *Direct requests on Conventions Nos 87, 98, 128, 144, 167, 170, 172* |

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| **Belize** | **General observation**<br>**Observations on Conventions Nos 87, 98, 105, 115**<br>*Direct requests on Conventions Nos 29, 88, 97, 100, 105, 111, 138, 140, 144, 150, 154, 155, 156, 182*<br>**Observation on submission** |
| **Benin** | *General direct request*<br>*Direct request on Convention No. 144*<br>*Direct request on submission* |
| **Bolivia (Plurinational State of)** | *General direct request*<br>**Observation on Convention No. 131**<br>**Observation on submission** |
| **Bosnia and Herzegovina** | **Observation on Convention No. 87**<br>*Direct requests on Conventions Nos 87, 98, 135, 144, 151, 154*<br>*Direct request on submission* |
| **Botswana** | **Observations on Conventions Nos 87, 98, 144**<br>*Direct request on Convention No. 87*<br>*Direct request on submission* |
| **Brazil** | **Observations on Conventions Nos 98, 169**<br>*Direct requests on Conventions Nos 98, 144, 151, 155, 169*<br>*Direct request on submission* |
| **Brunei Darussalam** | *Direct requests on Conventions Nos 138, 182*<br>**Observation on submission** |
| **Bulgaria** | **Observation on Convention No. 87**<br>*Direct request on Convention No. 144*<br>*Direct request on submission* |
| **Burkina Faso** | *Direct request on Convention No. 187*<br>*Direct request on submission* |
| **Burundi** | **Observations on Conventions Nos 11, 26, 87, 98, 111, 144**<br>*Direct requests on Conventions Nos 87, 111, 135*<br>*Direct request on submission* |
| **Cabo Verde** | *Direct request on submission* |
| **Cambodia** | **Observations on Conventions Nos 87, 98**<br>*Direct request on Convention No. 87*<br>*Direct request on submission* |
| **Cameroon** | **Observations on Conventions Nos 87, 98, 158**<br>*Direct requests on Conventions Nos 108, 146*<br>*Direct request on submission* |
| **Canada** | **Observation on Convention No. 87**<br>*Direct requests on Conventions Nos 87, 98, 108, 144, 186*<br>*Direct request on submission* |
| **Central African Republic** | **Observations on Conventions Nos 87, 98**<br>*Direct requests on Conventions Nos 87, 144*<br>**Observation on submission** |
| **Chad** | *General direct request*<br>**Observations on Conventions Nos 87, 111, 144, 182**<br>*Direct requests on Conventions Nos 81, 87, 100, 102, 105, 111, 122, 138, 182*<br>**Observation on submission** |
| **Chile** | **Observations on Conventions Nos 87, 98, 144**<br>*Direct requests on Conventions Nos 32, 87, 98, 187*<br>**Observation on submission** |

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|---|---|
| **China** | **Observations on Conventions Nos 155, 167**<br>*Direct requests on Conventions Nos 32, 111, 122, 144, 155, 167, 170*<br>*Direct request on submission* |
| **Hong Kong Special Administrative Region** | **Observations on Conventions Nos 87, 98, 144**<br>*Direct requests on Conventions Nos 32, 186* |
| **Macau Special Administrative Region** | **Observations on Conventions Nos 87, 98**<br>*Direct requests on Conventions Nos 92, 108, 144* |
| **Colombia** | **Observations on Conventions Nos 87, 98, 144**<br>*Direct requests on Conventions Nos 87, 98*<br>*Direct request on submission* |
| **Comoros** | **Observations on Conventions Nos 13, 98**<br>*Direct requests on Conventions Nos 81, 87, 98, 100, 111, 144*<br>**Observation on submission** |
| **Congo** | **General observation**<br>**Observations on Conventions Nos 29, 81, 87, 100, 111, 152, 182, 186**<br>*Direct requests on Conventions Nos 29, 87, 98, 100, 105, 111, 144, 149, 182, 185, 186*<br>**Observation on submission** |
| **Cook Islands** | *Direct request on submission* |
| **Costa Rica** | **Observations on Conventions Nos 87, 98**<br>*Direct requests on Conventions Nos 87, 137*<br>*Direct request on submission* |
| **Côte d'Ivoire** | *General direct request*<br>*Direct requests on Conventions Nos 100, 150, 155, 160, 161, 171, 187*<br>*Direct request on submission* |
| **Croatia** | **Observation on Convention No. 98**<br>*Direct requests on Conventions Nos 32, 87, 98, 185*<br>**Observation on submission** |
| **Cuba** | **Observation on Convention No. 110**<br>*Direct requests on Conventions Nos 137, 152*<br>*Direct request on submission* |
| **Cyprus** | *Direct request on Convention No. 170*<br>*Direct request on submission* |
| **Czechia** | *Direct requests on Conventions Nos 98, 154*<br>*Direct request on submission* |
| **Democratic Republic of the Congo** | **Observations on Conventions Nos 94, 100, 111, 144**<br>*Direct requests on Conventions Nos 62, 81, 100, 111, 119, 120, 150*<br>**Observation on submission** |
| **Denmark** | *Direct requests on Conventions Nos 144, 152* |
| **Faroe Islands** | *Direct requests on Conventions Nos 108, 186* |
| **Greenland** | *Direct request on Convention No. 100* |
| **Djibouti** | **General observation**<br>**Observations on Conventions Nos 19, 24, 37, 38, 87, 122, 138, 144, 182**<br>*Direct requests on Conventions Nos 17, 18, 29, 71, 81, 87, 98, 100, 105, 111, 138, 182*<br>*Direct request on submission* |
| **Dominica** | **General observation**<br>**Observations on Conventions Nos 29, 81, 94, 138, 147**<br>*Direct requests on Conventions Nos 12, 19, 26, 29, 87, 95, 97, 100, 105, 111, 135, 144, 150, 169, 182*<br>**Observation on submission** |
| **Dominican Republic** | **Observations on Conventions Nos 87, 98, 144**<br>*Direct requests on Conventions Nos 102, 183*<br>*Direct request on submission* |

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|---|---|
| **Ecuador** | **Observations on Conventions Nos 87, 98, 144**<br>*Direct requests on Conventions Nos 87, 95, 131, 152, 189*<br>*Direct request on submission* |
| **Egypt** | **Observations on Conventions Nos 87, 98**<br>*Direct requests on Conventions Nos 137, 152*<br>*Direct request on submission* |
| **El Salvador** | **Observation on Convention No. 87**<br>**Observation on submission** |
| **Equatorial Guinea** | **General observation**<br>**Observations on Conventions Nos 87, 98, 103, 111**<br>*Direct requests on Conventions Nos 1, 29, 30, 68, 92, 105, 138, 182*<br>**Observation on submission** |
| **Eritrea** | **Observations on Conventions Nos 87, 98, 105, 138**<br>*Direct requests on Conventions Nos 87, 105, 138*<br>*Direct request on submission* |
| **Eswatini** | **Observation on Convention No. 87**<br>*Direct requests on Conventions Nos 87, 98* |
| **Ethiopia** | **Observation on Convention No. 138**<br>*Direct requests on Conventions Nos 138, 144*<br>*Direct request on submission* |
| **Fiji** | **Observations on Conventions Nos 87, 98, 100, 111, 144**<br>*Direct requests on Conventions Nos 19, 100, 108, 111, 186* |
| **Finland** | *Direct requests on Conventions Nos 98, 137, 152, 186* |
| **France** | *Direct requests on Conventions Nos 71, 87, 98*<br>*Direct request on submission* |
| **French Polynesia** | **Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 81, 100, 111, 125, 129* |
| **New Caledonia** | *Direct requests on Conventions Nos 144, 186* |
| **Gabon** | **General observation**<br>**Observations on Conventions Nos 100, 111, 186**<br>*Direct requests on Conventions Nos 100, 111, 122, 186*<br>**Observation on submission** |
| **Gambia** | **Observations on Conventions Nos 87, 98**<br>*Direct requests on Conventions Nos 87, 100, 111*<br>**Observation on submission** |
| **Georgia** | **Observations on Conventions Nos 100, 111**<br>*Direct requests on Conventions Nos 100, 111*<br>*Direct request on submission* |
| **Germany** | **Observations on Conventions Nos 100, 111**<br>*Direct requests on Conventions Nos 100, 111, 172, 189*<br>*Direct request on submission* |
| **Ghana** | **Observations on Conventions Nos 100, 111, 182**<br>*Direct requests on Conventions Nos 29, 107, 111, 117, 144, 149, 182*<br>*Direct request on submission* |
| **Greece** | **Observations on Conventions Nos 100, 111, 149, 156**<br>*Direct requests on Conventions Nos 100, 111, 122, 156*<br>*Direct request on submission* |
| **Grenada** | **General observation**<br>**Observations on Conventions Nos 81, 144**<br>*Direct requests on Conventions Nos 81, 87, 97, 100, 105, 111, 138, 182*<br>**Observation on submission** |

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| **Guatemala** | **Observations on Conventions Nos 87, 98, 169**<br>*Direct requests on Conventions Nos 97, 100, 111, 156, 169, 175* |
| **Guinea** | *General direct request*<br>**Observations on Conventions Nos 111, 118, 156**<br>*Direct requests on Conventions Nos 100, 111, 117, 118, 122, 140, 143, 149, 156*<br>**Observation on submission** |
| **Guinea - Bissau** | *General direct request*<br>**Observations on Conventions Nos 26, 100, 111**<br>*Direct requests on Conventions Nos 12, 17, 18, 19, 81, 88, 100, 107, 111, 138, 182*<br>**Observation on submission** |
| **Guyana** | **General observation**<br>**Observations on Conventions Nos 98, 100, 111, 138, 139, 140**<br>*Direct requests on Conventions Nos 94, 97, 144, 149, 172, 182, 189*<br>**Observation on submission** |
| **Haiti** | *General direct request*<br>**Observations on Conventions Nos 1, 12, 14, 17, 24, 25, 30, 42, 81, 87, 98, 106, 182**<br>*Direct requests on Conventions Nos 29, 77, 78, 81, 87, 100, 111, 138, 182*<br>**Observation on submission** |
| **Honduras** | **Observations on Conventions Nos 87, 100, 169**<br>*Direct requests on Conventions Nos 100, 111, 122, 169*<br>*Direct request on submission* |
| **Hungary** | **Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 100, 111, 185*<br>**Observation on submission** |
| **Iceland** | **Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 100, 111, 122, 156* |
| **India** | *General direct request*<br>**Observations on Conventions Nos 81, 100, 107**<br>*Direct requests on Conventions Nos 81, 100, 107, 138, 182*<br>*Direct request on submission* |
| **Indonesia** | **Observations on Conventions Nos 100, 111**<br>*Direct requests on Conventions Nos 100, 111, 186* |
| **Iran (Islamic Republic of)** | **Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 100, 122*<br>*Direct request on submission* |
| **Iraq** | *General direct request*<br>**Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 22, 23, 92, 100, 111, 122, 144, 146, 147, 149, 172, 187*<br>**Observation on submission** |
| **Ireland** | **Observations on Conventions Nos 111, 122**<br>*Direct requests on Conventions Nos 100, 111, 172, 189*<br>*Direct request on submission* |
| **Israel** | **Observations on Conventions Nos 97, 100, 111**<br>*Direct requests on Conventions Nos 97, 100, 111, 122* |
| **Italy** | **Observations on Conventions Nos 111, 143**<br>*Direct requests on Conventions Nos 97, 100, 111, 143*<br>*Direct request on submission* |
| **Jamaica** | **General observation**<br>**Observations on Conventions Nos 94, 100**<br>*Direct requests on Conventions Nos 100, 111*<br>*Direct request on submission* |

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| **Japan** | **Observations on Conventions Nos 87, 100, 122, 156**<br>*Direct requests on Conventions Nos 100, 122, 156, 186* |
| **Jordan** | **Observations on Conventions Nos 98, 100, 111**<br>*Direct requests on Conventions Nos 100, 111, 144, 185, 186*<br>*Direct request on submission* |
| **Kazakhstan** | **Observations on Conventions Nos 87, 100, 105, 111**<br>*Direct requests on Conventions Nos 100, 105, 111, 156, 187*<br>**Observation on submission** |
| **Kenya** | **Observations on Conventions Nos 17, 138, 182**<br>*Direct requests on Conventions Nos 97, 100, 111, 138, 142, 143, 149, 182*<br>*Direct request on submission* |
| **Kiribati** | *General direct request*<br>**Observations on Conventions Nos 138, 182**<br>*Direct requests on Conventions Nos 138, 182, 185, 186*<br>**Observation on submission** |
| **Kuwait** | **Observation on Convention No. 111**<br>*Direct request on Convention No. 111*<br>**Observation on submission** |
| **Kyrgyzstan** | *General direct request*<br>**Observations on Conventions Nos 81, 87, 138, 182**<br>*Direct requests on Conventions Nos 17, 29, 32, 45, 81, 87, 95, 97, 98, 100, 105, 111, 119, 120, 124, 131, 138, 144, 149, 157, 182*<br>**Observation on submission** |
| **Lao People's Democratic Republic** | *General direct request*<br>**Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 100, 111*<br>*Direct request on submission* |
| **Latvia** | **Observations on Conventions Nos 100, 111**<br>*Direct requests on Conventions Nos 100, 111, 158* |
| **Lebanon** | **General observation**<br>**Observations on Conventions Nos 29, 81, 100, 111, 138, 182**<br>*Direct requests on Conventions Nos 29, 81, 88, 100, 105, 111, 122, 138, 142, 150, 159, 172, 182*<br>**Observation on submission** |
| **Lesotho** | *General direct request*<br>**Observations on Conventions Nos 138, 182**<br>*Direct requests on Conventions Nos 29, 100, 105, 111, 138, 182*<br>*Direct request on submission* |
| **Liberia** | *General direct request*<br>**Observations on Conventions Nos 87, 98, 112, 113, 114**<br>*Direct requests on Conventions Nos 29, 105, 111, 144, 186*<br>**Observation on submission** |
| **Libya** | **Observations on Conventions Nos 111, 122**<br>*Direct requests on Conventions Nos 88, 96, 100*<br>**Observation on submission** |
| **Lithuania** | **Observations on Conventions Nos 100, 111**<br>*Direct requests on Conventions Nos 88, 100, 111*<br>*Direct request on submission* |
| **Luxembourg** | **Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 96, 100, 111* |

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| **Madagascar** | **General observation**<br>**Observations on Conventions Nos 100, 105, 111, 122, 138, 144, 182**<br>*Direct requests on Conventions Nos 29, 88, 100, 111, 117, 159, 182*<br>*Direct request on submission* |
| **Malawi** | *General direct request*<br>**Observations on Conventions Nos 111, 149**<br>*Direct requests on Conventions Nos 81, 97, 100, 111, 129, 150*<br>**Observation on submission** |
| **Malaysia** | *Direct requests on Conventions Nos 88, 144, 186*<br>*Response received to a direct request on Convention No. 95*<br>**Observation on submission** |
| **Sabah** | **Observation on Convention No. 97**<br>*Direct requests on Conventions Nos 94, 97* |
| **Maldives** | **General observation**<br>**Observation on Convention No. 186**<br>*Direct requests on Conventions Nos 29, 100, 105, 138, 182, 185, 186*<br>**Observation on submission** |
| **Mali** | **Observation on Convention No. 29**<br>*Direct requests on Conventions Nos 29, 100, 111, 122, 155, 159*<br>*Direct request on submission* |
| **Malta** | *Direct requests on Conventions Nos 149, 159, 186*<br>**Observation on submission** |
| **Marshall Islands** | **Observation on submission** |
| **Mauritania** | **Observations on Conventions Nos 29, 96, 100, 111, 138**<br>*Direct requests on Conventions Nos 94, 96, 100, 111, 138*<br>*Direct request on submission* |
| **Mauritius** | **Observations on Conventions Nos 94, 100, 111**<br>*Direct requests on Conventions Nos 88, 100, 111, 186*<br>*Direct request on submission* |
| **Mexico** | **Observation on Convention No. 100**<br>*Direct requests on Conventions Nos 100, 110, 111, 140, 142, 144, 159*<br>**Observation on submission** |
| **Mongolia** | *Direct requests on Conventions Nos 88, 122, 159, 176, 181*<br>*Direct request on submission* |
| **Montenegro** | *General direct request*<br>**Observation on Convention No. 100**<br>*Direct requests on Conventions Nos 100, 111, 122, 142, 152, 158, 185*<br>*Direct request on submission* |
| **Morocco** | **Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 2, 100, 111, 181*<br>*Direct request on submission* |
| **Mozambique** | *General direct request*<br>**Observations on Conventions Nos 29, 100, 105, 111, 122**<br>*Direct requests on Conventions Nos 29, 88, 100, 105, 111*<br>**Observation on submission** |
| **Myanmar** | **Observation on Convention No. 29**<br>*Direct requests on Conventions Nos 2, 29, 185* |
| **Namibia** | **Observation on Convention No. 111**<br>*Direct requests on Conventions Nos 100, 111* |
| **Nepal** | *Direct request on submission* |

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| **Netherlands** | **Observations on Conventions Nos 94, 100, 111**<br>*Direct requests on Conventions Nos 88, 100, 111, 122, 139, 142, 148, 159, 170, 181*<br>*Direct request on submission* |
| **Aruba** | **General observation**<br>**Observation on Convention No. 138**<br>*Direct requests on Conventions Nos 29, 87, 88, 94, 105, 122, 138, 140, 142, 144, 182* |
| **Caribbean Part of the Netherlands** | *Direct requests on Conventions Nos 88, 122* |
| **Curaçao** | *Direct requests on Conventions Nos 182, 186* |
| **Sint Maarten** | **General observation**<br>**Observation on Convention No. 87**<br>*Direct requests on Conventions Nos 88, 94, 122* |
| **New Zealand** | **Observations on Conventions Nos 88, 100**<br>*Direct requests on Conventions Nos 100, 111*<br>*Direct request on submission* |
| **Tokelau** | *Direct requests on Conventions Nos 82, 100, 111* |
| **Nicaragua** | **Observations on Conventions Nos 100, 117**<br>*Direct requests on Conventions Nos 88, 100, 111, 140, 142*<br>*Direct request on submission* |
| **Niger** | **Observation on Convention No. 29**<br>*Direct requests on Conventions Nos 29, 100, 111, 158* |
| **Nigeria** | **General observation**<br>**Observations on Conventions Nos 88, 100, 111, 159**<br>*Direct requests on Conventions Nos 94, 100, 111*<br>*Direct request on submission* |
| **North Macedonia** | *Direct requests on Conventions Nos 88, 94, 100, 111, 122, 140, 142, 158, 159, 177, 181*<br>**Observation on submission** |
| **Norway** | **Observation on Convention No. 94**<br>*Direct requests on Conventions Nos 100, 111, 122, 159*<br>*Direct request on submission* |
| **Oman** | **Observation on Convention No. 29**<br>*Direct requests on Conventions Nos 29, 182*<br>*Direct request on submission* |
| **Pakistan** | **Observations on Conventions Nos 29, 81, 98, 105, 138, 182**<br>*Direct requests on Conventions Nos 29, 81, 105, 138, 182*<br>**Observation on submission** |
| **Palau** | *Direct request on submission* |
| **Panama** | *Direct requests on Conventions Nos 29, 81, 105, 138, 182*<br>*Direct request on submission* |
| **Papua New Guinea** | *General direct request*<br>**Observations on Conventions Nos 98, 111, 138, 158**<br>*Direct requests on Conventions Nos 29, 100, 111, 122, 138*<br>**Observation on submission** |
| **Paraguay** | **Observations on Conventions Nos 29, 81**<br>*Direct requests on Conventions Nos 29, 81*<br>*Direct request on submission* |
| **Peru** | **Observations on Conventions Nos 29, 81, 182**<br>*Direct requests on Conventions Nos 29, 81, 105, 138, 182*<br>*Direct request on submission* |
| **Philippines** | **Observations on Conventions Nos 29, 87, 105, 138, 182**<br>*Direct requests on Conventions Nos 87, 105, 151, 182, 189*<br>*Direct request on submission* |

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| **Poland** | **Observations on Conventions Nos 29, 81, 129**<br>*Direct requests on Conventions Nos 29, 81, 129* |
| **Portugal** | **Observations on Conventions Nos 81, 129**<br>*Direct requests on Conventions Nos 81, 129, 186, 187*<br>*Direct request on submission* |
| **Qatar** | **Observations on Conventions Nos 29, 81**<br>*Direct requests on Conventions Nos 29, 81*<br>*Direct request on submission* |
| **Republic of Korea** | **Observations on Conventions Nos 100, 111, 156**<br>*Direct requests on Conventions Nos 100, 111, 156*<br>*Direct request on submission* |
| **Republic of Moldova** | **Observations on Conventions Nos 105, 111, 152**<br>*Direct requests on Conventions Nos 100, 111, 117, 138, 144, 185*<br>**Observation on submission** |
| **Romania** | **General observation**<br>**Observations on Conventions Nos 81, 129**<br>*Direct requests on Conventions Nos 29, 81, 129, 186*<br>*Response received to a direct request on Convention No. 105*<br>*Direct request on submission* |
| **Russian Federation** | *General direct request*<br>**Observations on Conventions Nos 29, 81, 105, 138, 182**<br>*Direct requests on Conventions Nos 29, 81, 105, 138, 139, 175, 182* |
| **Rwanda** | *General direct request*<br>**Observations on Conventions Nos 26, 100, 105**<br>*Direct requests on Conventions Nos 29, 100, 138, 182*<br>**Observation on submission** |
| **Saint Kitts and Nevis** | **General observation**<br>*Direct requests on Conventions Nos 29, 105, 138, 182, 186* |
| **Saint Lucia** | **General observation**<br>**Observations on Conventions Nos 17, 87, 98, 100**<br>*Direct requests on Conventions Nos 5, 19, 29, 87, 100, 108, 111, 154, 158, 182*<br>**Observation on submission** |
| **Saint Vincent and the Grenadines** | *General direct request*<br>**Observations on Conventions Nos 81, 100, 111, 129, 182**<br>*Direct requests on Conventions Nos 81, 100, 102, 105, 111, 122, 129, 138, 144, 182, 186*<br>**Observation on submission** |
| **Samoa** | **Observations on Conventions Nos 138, 182**<br>*Direct requests on Conventions Nos 29, 105, 138, 182, 186*<br>*Direct request on submission* |
| **San Marino** | *General direct request*<br>*Direct requests on Conventions Nos 98, 156*<br>*Direct request on submission* |
| **Sao Tome and Principe** | **General observation**<br>**Observation on Convention No. 98**<br>*Direct requests on Conventions Nos 29, 81, 87, 138, 182*<br>*Direct request on submission* |
| **Saudi Arabia** | **Observations on Conventions Nos 29, 138**<br>*Direct requests on Conventions Nos 29, 138*<br>*Direct request on submission* |
| **Senegal** | **Observations on Conventions Nos 81, 87, 182**<br>*Direct requests on Conventions Nos 81, 182* |

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| **Serbia** | **Observations on Conventions Nos 81, 105, 129, 144**<br>*Direct requests on Conventions Nos 29, 81, 94, 105, 129, 182*<br>*Direct request on submission* |
| **Seychelles** | **Observations on Conventions Nos 105, 138, 182**<br>*Direct requests on Conventions Nos 29, 81, 105, 182, 186*<br>**Observation on submission** |
| **Sierra Leone** | *General direct request*<br>**Observations on Conventions Nos 17, 29, 81, 88, 119, 125, 138**<br>*Direct requests on Conventions Nos 26, 81, 94, 95, 100, 101, 105, 111, 126, 138, 144, 182*<br>**Observation on submission** |
| **Singapore** | *Direct requests on Conventions Nos 32, 94, 144*<br>*Direct request on submission* |
| **Slovakia** | *Direct request on Convention No. 26*<br>*Direct request on submission* |
| **Slovenia** | **Observations on Conventions Nos 81, 129**<br>*Direct requests on Conventions Nos 81, 129, 186* |
| **Solomon Islands** | *Direct request on Convention No. 98*<br>**Observation on submission** |
| **Somalia** | *General direct request*<br>**Observations on Conventions Nos 87, 182**<br>*Direct requests on Conventions Nos 29, 87, 98, 182*<br>**Observation on submission** |
| **South Africa** | **Observations on Conventions Nos 29, 105, 138, 182**<br>*Direct requests on Conventions Nos 29, 81, 105, 182, 186, 188*<br>*Direct request on submission* |
| **South Sudan** | *General direct request*<br>*Direct requests on Conventions Nos 29, 98, 100, 105, 111, 138, 182*<br>*Direct request on submission* |
| **Spain** | **Observation on Convention No. 182**<br>*Direct requests on Conventions Nos 29, 81, 129, 182* |
| **Sri Lanka** | **General observation**<br>**Observations on Conventions Nos 81, 98, 138, 182**<br>*Direct requests on Conventions Nos 81, 105, 122, 182, 185*<br>*Direct request on submission* |
| **Sudan** | **Observations on Conventions Nos 29, 105, 138, 182**<br>*Direct requests on Conventions Nos 29, 105, 138, 182*<br>*Direct request on submission* |
| **Suriname** | *Direct requests on Conventions Nos 29, 81, 100, 105, 111, 182*<br>*Direct request on submission* |
| **Sweden** | *Direct requests on Conventions Nos 29, 81, 129*<br>*Direct request on submission* |
| **Switzerland** | *Direct requests on Conventions Nos 29, 81* |
| **Syrian Arab Republic** | *General direct request*<br>**Observations on Conventions Nos 29, 105, 138, 182**<br>*Direct requests on Conventions Nos 29, 81, 105, 107, 129, 182*<br>**Observation on submission** |
| **Tajikistan** | **Observations on Conventions Nos 81, 111, 138, 182**<br>*Direct requests on Conventions Nos 29, 45, 81, 87, 97, 98, 103, 105, 111, 115, 119, 120, 122, 138, 142, 148, 149, 155, 177, 182*<br>*Direct request on submission* |

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| **Thailand** | *Direct request on Convention No. 111*<br>*Direct request on submission* |
| **Timor-Leste** | *Direct requests on Conventions Nos 87, 98, 100, 111*<br>**Observation on submission** |
| **Togo** | **Observation on Convention No. 138**<br>*Direct requests on Conventions Nos 29, 150*<br>*Direct request on submission* |
| **Tonga** | *Direct request on submission* |
| **Trinidad and Tobago** | **Observations on Conventions Nos 105, 182**<br>*Direct requests on Conventions Nos 19, 29, 81, 138, 150, 182* |
| **Tunisia** | **General observation**<br>**Observation on Convention No. 118**<br>*Direct requests on Conventions Nos 18, 45, 62, 81, 120*<br>*Direct request on submission* |
| **Turkey** | **Observations on Conventions Nos 29, 81, 87, 98, 111, 115, 119, 127, 135, 138, 155, 161, 167, 176, 182, 187**<br>*Direct requests on Conventions Nos 29, 81, 87, 111, 115, 119, 127, 138, 155, 161, 167, 176, 182, 187*<br>*Response received to direct requests on Conventions Nos. 14, 26, 95, 99, 153* |
| **Turkmenistan** | **Observations on Conventions Nos 105, 182**<br>*Direct requests on Conventions Nos 105, 182*<br>*Direct request on submission* |
| **Tuvalu** | *General direct request*<br>*Direct request on Convention No. 186*<br>**Observation on submission** |
| **Uganda** | *General direct request*<br>**Observations on Conventions Nos 26, 81, 105, 138, 182**<br>*Direct requests on Conventions Nos 12, 17, 19, 29, 45, 81, 94, 95, 100, 111, 123, 124, 138, 143, 162, 182*<br>*Direct request on submission* |
| **Ukraine** | *General direct request*<br>**Observations on Conventions Nos 29, 81, 95, 105, 129, 131, 138, 139, 155, 173, 176, 182**<br>*Direct requests on Conventions Nos 29, 81, 102, 105, 115, 119, 120, 129, 138, 139, 150, 153, 155, 160, 161, 174, 176, 182, 184*<br>*Response received to direct requests on Conventions Nos. 14, 45, 47, 106*<br>*Direct request on submission* |
| **United Arab Emirates** | **Observations on Conventions Nos 29, 105, 138**<br>*Direct requests on Conventions Nos 1, 29, 81, 89, 105, 182* |
| **United Kingdom of Great Britain and Northern Ireland** | **Observations on Conventions Nos 29, 81**<br>*Direct requests on Conventions Nos 29, 42, 102, 115, 120, 148, 150, 160, 187* |
| **Anguilla** | *Direct requests on Conventions Nos 26, 85, 99, 148* |
| **Bermuda** | *Direct request on Convention No. 115* |
| **British Virgin Islands** | *Direct request on Convention No. 85* |
| **Falkland Islands (Malvinas)** | *Response received to a direct request on Convention No. 17* |
| **Gibraltar** | **Observation on Convention No. 17**<br>*Direct request on Convention No. 160* |
| **Guernsey** | *Direct requests on Conventions Nos 42, 63, 81, 115*<br>*Response received to a direct request on Convention No. 19* |
| **Isle of Man** | **Observation on Convention No. 17**<br>*Direct requests on Conventions Nos 81, 102, 150, 160* |
| **Jersey** | *Direct requests on Conventions Nos 17, 115, 160*<br>*Response received to direct requests on Conventions Nos. 24, 25, 81* |
| **Montserrat** | *Direct request on Convention No. 85*<br>*Response received to direct requests on Conventions Nos. 17, 42* |
| **St Helena** | *Direct requests on Conventions Nos 63, 85, 150*<br>*Response received to a direct request on Convention No. 17* |

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| **United Republic of Tanzania** | **General observation**<br>**Observations on Conventions Nos 29, 105, 138, 182**<br>*Direct requests on Conventions Nos 17, 19, 29, 95, 105, 138, 140, 142, 148, 170, 182*<br>*Direct request on submission* |
| **United Republic of Tanzania.Tanganyika** | **General observation**<br>*Direct request on Convention No. 81* |
| **United Republic of Tanzania.Zanzibar** | *Direct request on Convention No. 85* |
| **United States of America** | **Observations on Conventions Nos 105, 182**<br>*Direct requests on Conventions Nos 105, 150, 160, 176, 182* |
| **Uruguay** | **Observations on Conventions Nos 29, 98, 155, 161, 162**<br>*Direct requests on Conventions Nos 29, 63, 81, 102, 115, 118, 121, 129, 131, 136, 139, 150, 153, 155, 161, 162, 167, 176, 184*<br>*Direct request on submission* |
| **Uzbekistan** | **Observation on Convention No. 105**<br>*Direct requests on Conventions Nos 47, 87, 105*<br>*Direct request on submission* |
| **Vanuatu** | **General observation**<br>*Direct request on Convention No. 182*<br>**Observation on submission** |
| **Venezuela (Bolivarian Republic of)** | **Observations on Conventions Nos 26, 29, 81, 87, 95, 102, 105, 121, 128, 130, 138, 144, 155 182**<br>*Direct requests on Conventions Nos 1, 13, 29, 45, 81, 95, 120, 127, 138, 139, 150, 155, 182*<br>*Response received to a direct request on Convention No. 153*<br>*Direct request on submission* |
| **Viet Nam** | **Observations on Conventions Nos 29, 81, 138, 182**<br>*Direct requests on Conventions Nos 14, 29, 45, 81, 120, 138, 155, 182, 186, 187*<br>*Direct request on submission* |
| **Yemen** | *General direct request*<br>**Observation on submission** |
| **Zambia** | *General direct request*<br>*Direct requests on Conventions Nos 148, 176*<br>**Observation on submission** |
| **Zimbabwe** | **Observations on Conventions Nos 29, 81, 87, 98, 105, 129, 138, 155, 161, 162, 170, 174, 176, 182**<br>*Direct requests on Conventions Nos 26, 29, 81, 99, 105, 129, 150, 155, 161, 162, 174, 176, 182*<br>*Response received to a direct request on Convention No. 14*<br>*Direct request on submission* |